(7)

No. 99-6615

Supreme Court, U.S.
FILED
NOV 23 1999
CLERK

In The

Supreme Court of the United States

MICHAEL WAYNE WILLIAMS,

Petitioner,

vs.

JOHN B. TAYLOR, WARDEN,
SUSSEX I STATE PRISON, WAVERLY VIRGINIA,

Respondent.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Fourth Circuit

JOINT APPENDIX
VOLUME I, PAGES 1 TO 214

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Petition For Certiorari Filed October 18, 1999
Certiorari Granted October 28, 1999

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WILLIAMS V. TAYLOR: JOINT APPENDIX
TABLE OF CONTENTS

Page

VOLUME I

Relevant Docket Entries 1
Capital Indictments (Filed 6/29/93) 19
Discovery Motion: Excerpts (6/23/93) 24
Discovery Order (9/15/93) 30

Excerpts of January, 1994 trial transcript:
Stinnett Voir Dire 32
Opening Statements 54
Testimony Of:
Claude Meinhard 66
Jeffrey Cruse 73
Commonwealth's Ex. 13 162
Deborah Kay, M.D. 164
Lisa Schiermeier 187
George Li 200
Commonwealth's Ex. 42 210
Commonwealth's Ex. 43 214

VOLUME II

Richard Holt 215
Michael Williams 222
Court's Charge – Guilt Phase and Summations 249
Jury Instructions (Nos. 14-20) 290
Guilt Verdict: Capital Counts 295

TABLE OF CONTENTS – Continued

Page

Sentencing Phase:

Prior Adjudicated Offenses 300

Testimony of:
John Williams 302

William Massello 317

Sentencing Verdict: Capital Counts 333

Williams' Sentencing Statement (2/22/94) 336

Williams' Letter to Court 338

STATE HABEAS:

Letter: White to Meinhard (10/30/95) 340

Letter: White to Southall (10/30/95) 342

Letter: White to Von Schuch, Curry (10/30/95) 344

Letter: Curry to White (11/1/95) 352

Motion for Expert Services (11/30/95) 355

Letter: White to Curry (12/1/95) 361

Letter: Curry to White (12/11/95) 363

Opposition to Motion for Expert Services 364

Motion For Production of Cruse and Discovery 371

Opposition to Motion for Discovery 373

State Habeas Petition: Excerpts 376

Exhibits to State Habeas Petition: 393

Affidavit of Blessing (1/23/96) 394

TABLE OF CONTENTS – Continued

Page

Affidavit of Ford (1/26/96) 395

Affidavit of Carrico (1/25/96) 398

Cruse Plea Transcript (3/14/94) 401

Cruse Sentence Transcript (4/26/94) 415

VOLUME III

Exhibits to Respondent's Motion to Dismiss:

Affidavit of Ford and Carrico (2/15/96) 429

Affidavit of Woodson (2/14/96) 440

Affidavit of Blessing (2/7/96) 441

Affidavit of Juror Blanton (9/15/94) 443

Virginia Supreme Court Order Dismissing Writ (3/18/96) 444

FEDERAL DISTRICT COURT

Brief in Support of Motion For Experts:
Excerpts (9/3/96) 446

Letter: Curry to Moore (9/25/96) 456

Federal Habeas Petition (11/21/96): Excerpts 458

Index to Exhibits 483

Court Records Re: Stinnett 483

Affidavit of Pye (11/18/96) 492

Cruse Psychiatric Report (9/14/93) 495

Letter: Ennis to Blessing (3/25/97) 500

TABLE OF CONTENTS – Continued

Page

Affidavit of Blessing (3/11/97) 501

Motion For Leave to Invoke Discovery (4/29/97)..... 505

Reply to Opposition to Discovery (5/14/97) 514

Order Denying Discovery (7/16/97) 520

Letter: Brown to Cruse (7/29/97)..... 521

Second Motion for Leave to Invoke Discovery (7/31/97) 524

District Court Order and Opinion (4/13/98) 529

Motion for Leave to Invoke Discovery (4/17/98) 614

Petitioner's Rule 59(e) Motion (4/27/98): Excerpts 619

Exhibit: White Affidavit 625

Respondent's Exhibits:

Affidavit of Stinnett (4/27/98)..... 627

Affidavit of Woodson (4/27/98) 629

Letter: Moore to Curry (5/5/98)..... 631

Letter: Curry to Moore (5/5/98)..... 632

District Court Order Denying Rule 59(e) and Discovery Motion (5/15/98) 633

In Re: Fred W. Greene, No. 98-17 (4th Cir. 5/27/98) ... 635

District court order and opinion (6/3/98)..... 638

District court order (11/12/98) 647

District court order (12/15/98) 649

TABLE OF CONTENTS – Continued

Page

COURT OF APPEALS

Williams v. Taylor, No. 99-1 (4th Cir. Aug. 2, 1999) 651

Supreme Court Order Granting Certiorari and Motion To Proceed In Forma Pauperis 672

WILLIAMS V. TAYLOR, WARDEN
NO. 99-6615

RELEVANT DOCKET ENTRIES

State Court Proceedings

June 29, 1993	Indictments for Capital Murder and related offenses [Filed]
January 3-7, 1994	Capital trial. Petitioner sentenced to death by jury.
February 22, 1994	Trial court imposes death sentences.
November 4, 1994	Convictions and death sentences affirmed by the Virginia Supreme Court.
August 10, 1995	Order appointing state habeas counsel.
August 30, 1995	Incomplete petition for writ of habeas corpus filed in the Virginia Supreme Court with motion for leave to amend.
January 29, 1996	Amended petition for writ of habeas corpus filed in the Virginia Supreme Court.
March 18, 1996	Petition for writ of habeas corpus dismissed by Order of the Virginia Supreme Court. All motions denied.

Federal Court Proceedings

* * *

7/1/96	5	MOTION by Michael Wayne Williams for Appointment of Counsel, and by Michael Wayne Williams to Stay (lsal)

* * *

7/3/96	12	ORDER granting [5-1] motion by Michael Wayne Williams for Appointment of Counsel, granting [5-2] motion by Michael Wayne Williams to Stay; scheduled execution of Petitioner on 7-11-96 is stayed until further Order of this Court (signed by Judge Robert R. Merhige Jr.) Copies Mailed: y (jpar)
8/13/96	13	ORDER appointing James E. Moore, Esquire and Theodore F. Adams, III, Esquire as additional counsel for the petitioner. (signed by Judge Robert R. Merhige Jr.) Copies Mailed: y (lsal)

* * *

9/3/96	15	MOTION by Michael Wayne Williams SEALED EX PARTE. (lsal) [Entry date 09/04/96] [Edit date 09/05/96]
9/3/96	16	MOTION by Michael Wayne Williams SEALED EX PARTE (lsal) [Entry date 09/04/96] [Edit date 09/05/96]
9/3/96	17	MEMORANDUM by Michael Wayne Williams in support of [16-1] motion by Michael Wayne Williams SEALED EX PARTE (lsal) [Entry date 09/04/96] [Edit date 09/05/96]
9/5/96	18	ORDER (signed by Judge Robert R. Merhige Jr.) Copies Mailed to Petitioner's counsel. SEALED EX PARTE (lsal) [Edit date 09/05/96]

9/9/96	19	SUPPLEMENTAL MOTION by Michael Wayne Williams SEALED EX PARTE (lsal)
9/13/96	20	ORDER (signed by Judge Robert R. Merhige Jr.) copies Mailed: to petitioner's counsel. SEALED EX PARTE. (lsal) [Edit date 09/17/96]
9/18/96	21	ORDER that the Court's earlier Orders granting petitioner permission to proceed ex parte and under seal are hereby STAYED until the further Order of this Court. (signed by Judge Robert R. Merhige Jr.) Copies Mailed: y (lsal)

* * *

10/7/96	24	ORDER that the Court grants respondent's motion for an adversarial hearing for the limited purpose of assessing petitioner's need for confidentiality. Petitioner's counsel is requested to arrange a conference call with respondent's counsel to set an appropriate hearing date. (signed by Judge Robert R. Merhige Jr.) Copies Mailed: y (lsal)

* * *

10/23/96	28	IN OPEN COURT: Merhige, J., G. Halasz, OCR. Appearances: Parties by counsel. Matter came on for an adversarial hearing on Petitioner's motion to proceed ex parte. Arguments heard. Findings of Facts and Conclusions of Law stated from the bench. Petitioner's motion; taken under advisement. The Court directed Petitioner to file his

claims ex parte. The Court directed that it will review the claims in camera to determine if an adversarial proceeding is necessary. Matter continued until further Order of the Court. (:31) (walk) [Entry date 10/24/96]

* * *

10/24/96 29 MOTION by Michael Wayne Williams FILED UNDER SEAL EX PARTE per hearing on 10/23/96. (lsal) [Entry date 10/25/96] [Edit date 10/29/96]

10/24/96 30 MEMORANDUM by Michael Wayne Williams in support of [29-1] motion by Michael Wayne Williams. FILED UNDER SEAL EX PARTE per hearing on 10/23/96. (lsal) [Entry date 10/25/96] [Edit date 10/29/96]

* * *

10/31/96 33 ORDER that Petitioner through counsel, appeared before the Court after notice to the Respondent for purposes of demonstrating a need for confidentiality by reason of having requested services pursuant to 21 U.S.C. 848 (q)(9), and the Court directed an adversarial hearing wherein the Court expressed the view that it would be necessary for Petitioner to list his alleged claims to the end that the Court be advised by respondent of any which allegedly have been defaulted to which action Petitioner objected, but did, however, at the Court's request, file a list of his intended claims, which the Court has refrained from looking at and sealed until such time as the USCA for

the Fourth Circuit renders a decision as to whether said listed claims may be shown to Respondent as this court deems necessary (signed by Judge Robert R. Merhige Jr.) Copies Mailed: yes (scoo)

* * *

11/20/96 46 INITIAL PETITION for writ of habeas corpus with Exhibits A-E attached. (lsal) [Entry date 11/21/96]

* * *

11/21/96 48 CORRECTED INITIAL PETITION for writ of habeas corpus; (lsal) [Entry date 11/22/96]

* * *

12/10/96 50 RENEWED MOTION by Michael Wayne Williams for Expert Assistance and For Leave to Proceed Ex Parte and Under Seal for Purposes of Requesting Expert Assistance (lsal) [Entry date 12/11/96]

* * *

12/20/96 54 RESPONSE by J. D. Netherland to [50-1] motion by Michael Wayne Williams for Expert Assistance and For Leave to Proceed Ex Parte and Under Seal for Purposes of Requesting Expert Assistance (lsal) [Entry date 12/23/96]

12/20/96 55 MOTION by J. D. Netherland to Dismiss and Rule 5 Answer (lsal) [Entry date 12/23/96]

12/20/96	56	MEMORANDUM by J. D. Netherland in support of [55-1] motion by J. D. Netherland to Dismiss and Rule 5 Answer with Exhibits A-D received and placed in brown expandable. (lsal) [Entry date 12/23/96]

* * *

1/13/97	62	CJA 30, Authorization to Pay the Virginia Capital Representation Resource Center (Attention: Barbara L. Hartung, Esquire) $42,601.10, Voucher #40641, Part I (Signed by Robert R. Merhige, Jr.) (walk) [Entry date 01/21/97] [Edit date 07/11/97]

* * *

2/3/97	64	RESPONSE by Michael Wayne Williams to [55-1] motion by J. D. Netherland to Dismiss and rule 5 Answer (lsal) [Entry date 02/04/97]

* * *

2/21/97	65	REPLY by J. D. Netherland to response in opposition by petitioner to [55-1] motion by J. D. Netherland to Dismiss and Rule 5 Answer (lsal)

* * *

3/10/97	67	Response by Michael Wayne Williams to [65-1] reply by J. D. Netherland to Petitioner's Opposition to the Motion to Dismiss. (lsal)
3/11/97	68	Response by J. D. Netherland to [67-1] response filed by Michael Wayne Williams (lsal)

* * *

4/29/97	69	MOTION by Michael Wayne Williams to Invoke Discovery (lsal) [Entry date 04/30/97]
4/29/97	70	Statement of Documents to Be Produced filed by petitioner. (lsal) [Entry date 04/30/97] [Edit date 07/11/97]
4/29/97	71	Request for Subpoenas Duces Tecum filed by petitioner. (lsal) [Entry date 04/30/97] [Edit date 07/11/97]

* * *

5/9/97	75	CJA 30, Authorization to Pay James E. Moore, Esquire of Christian & Barton $55,280.69, Voucher #40621, Part I. (Signed by Robert E. Payne) (walk) [Entry date 05/12/97] [Edit date 07/11/97]

* * *

7/16/97	87	ORDER denying [69-1] motion by Michael Wayne Williams to Invoke Discovery (signed by Judge James R. Spencer) Copies Mailed: y (lsal)
7/31/97	88	SECOND MOTION by Michael Wayne Williams for Leave to Invoke Discovery (lsal)
8/7/97	89	RESPONSE by J. D. Netherland to [88-1] Second motion by Michael Wayne Williams for Leave to Invoke Discovery (lsal)
8/15/97	90	REPLY by Michael Wayne Williams to response to [88-1] motion by Michael

		Wayne Williams for Leave to Invoke Discovery (lsal)
		* * *
11/4/97	92	CJA 30, Authorization to Pay Barbara L. Hartung, Esquire $7,337.50, Voucher #40624, Part I (Signed by Judge Robert R. Merhige Jr.) (walk)
12/4/97	93	CJA 30, Authorization to Pay the Virginia Capital Representation Resource Center $14,867.19, Voucher #D40641, Final Payment (Signed by Judge Robert R. Merhige Jr.) (walk) [Entry date 12/20/97]
4/10/98	–	So Order: DENYING [29-1] motion by Michael Wayne Williams. FILED EX PARTE and UNDER SEAL. (signed by Judge Robert R. Merhige Jr.) Copies Mailed: yes, to pet.tioner only. (lsal) [Edit date 04/10/98]
4/13/98	94	MEMORANDUM OPINION (signed by Judge Robert R. Merhige Jr.) Copies Mailed: y (lsal)
4/13/98	95	ORDER all claims asserted in the petition except Claims I(A), IV(A)(1), IV(A)(5) be and the same are hereby DISMISSED; and evidentiary hearing on Claims I(A), IV(A)(1) and IV(A)(5) will be conducted commencing at 8:30 a.m. Monday, May 18, 1998. Counsel for each of the parties herein shall, by 1:00 p.m. May 13, 1998 file with the Clerk of this Court proposed findings of fact and conclusions of law. (signed by Judge Robert R. Merhige Jr.) Copies Mailed: yes. (lsal)

4/17/98	–	Evidentiary Hearing set for 8:30 a.m. on 5/18/98 before Judge Robert R. Merhige Jr. (walk)
4/17/98	96	MOTION by Michael Wayne Williams For Leave to Invoke Discovery (lsal) [Entry date 04/20/98]
4/17/98	97	PETITION for writ of habeas corpus ad testificandum (to produce Jeffrey Allan Cruse for deposition on 5/6/98) filed by petitioner Michael Wayne Williams (lsal) [Entry date 04/20/98]
4/20/98	98	RESPONSE In Opposition by J. D. Netherland to [96-1] motion by Michael Wayne Williams. For Leave to Invoke Discovery (lsal)
4/20/98	99	MOTION by J. D. Netherland for Summary Judgment (lsal)
4/20/98	100	MEMORANDUM in support of [99-1] motion by J. D. Netherland for Summary Judgment (lsal)
4/23/98	–	Motion hearing re: [99-1] motion by J. D. Netherland for Summary Judgment set at 8:30 5/5/98, [96-1] motion by Michael Wayne Williams For Leave to Invoke Discovery set at 8:30 5/5/98, [88-1] motion by Michael Wayne Williams for Leave to Invoke Discovery set at 8:30 5/5/98 (walk)
4/23/98	101	REPLY by Michael Wayne Williams to response to [96-1] motion by Michael Wayne Williams For leave to Invoke Discovery (lsal)

4/27/98	102	Response by J. D. Netherland to [101-1] response by Michael Wayne Williams (lsal) [Entry date 04/28/98]
4/27/98	103	MOTION with Memorandum in Support by Michael Wayne Williams by Michael Wayne Williams to Amend [95-1] the Court's judgment of 4/13/98 (ahar) [Entry date 04/28/98]
4/28/98	104	SUPPLEMENTAL MEMORANDUM by J. D. Netherland in support of [99-1] motion by J. D. Netherland for Summary Judgment and [100-1] Memorandum In Support (lsal)
5/1/98	105	RESPONSE In Opposition by J. D. Netherland to [103-1] Rule 59(E) Motion by Michael Wayne Williams to Alter or Amend [95-1] Court's judgment of 4/13/98 (lsal)
5/1/98	106	RESPONSE In Opposition by Michael Wayne Williams to [99-1] motion by J. D. Netherland for Summary Judgment (lsal)
5/1/98	107	AFFIDAVIT Pursuant to Fed. R. Civ. P. 56(F) Re: [106-1] Petitioner's Opposition to Warden's Motion for Summary Judgment (lsal)
5/4/98	108	NOTICE of Supplemental Authority by Michael Wayne Williams (lsal)
5/4/98	109	SUPPLEMENTAL EXHIBIT in Support of Petitioner's Memorandum Opposing [99-1] motion by J. D. Netherland for Summary Judgment (lsal)
5/4/98	110	REPLY by Michael Wayne Williams to response in opposition to [103-1] motion

		(petitioner's Rule 59(E) by Michael Wayne Williams to Alter or Amend [95-1] the Court's judgment of 4/13/98 (lsal)
5/5/98	111	IN OPEN COURT: Merhige, Jr., Gilbert Halasz, OCR. Appearances: Parties by counsel. Petitioner's motion to compel discovery and Respondent's motion for summary judgment heard and taken under advisement. (:57) (walk)
5/5/98	–	Motion hearing held re: [99-1] motion by J. D. Netherland for Summary Judgment by J. D. Netherland, [96-1] motion by Michael Wayne Williams For Leave to Invoke Discovery by Michael Wayne Williams, [88-1] motion by Michael Wayne Williams for Leave to Invoke Discovery by Michael Wayne Williams (walk)
5/14/98	–	Slip Opinion of Harvey Green v. James B. French submitted by defendant as followup documentation to Warden's pending Motion for Summary Judgment regarding Williams' claim IV(a)(1). (lsal)
5/15/98	–	LETTER by counsel for Michael Wayne Williams in response to Slip Opinion of Harvey Green v. James B. French submitted by defendant on 5/14/98. (lsal)
5/15/98	112	ORDER denying [103-1] motion by Michael Wayne Williams to Amend [95-1] the Court's judgment of 4/13/98; [99-1] motion by J. D. Netherland for Summary Judgment CONTINUED UNDER ADVISEMENT; denying [96-1] motion by Michael Wayne Williams For

		Leave Invoke Discovery. The evidentiary hearing is continued until 9:30 a.m. May 29, 1998. Proposed Findings of Fact to be filed by 1:00 p.m. May 26, 1998 (signed by Judge Robert R. Merhige Jr.) Copies Mailed: yes. (lsal)
5/18/98	113	MOTION by J. D. Netherland, Warden, respondent, to Stay and for Expedited Consideration in re: to stay its Order of April 13, 1998, and its Order of May 15, 1998. (lsal) [Edit date 05/19/98]
5/18/98	114	PETITION for writ of habeas corpus ad testificandum submitted by petitioner; (lsal)
5/18/98	115	MOTION by Michael Wayne Williams for Issuance of Subpoena to Judge Robert G. Woodson, Jr. for Attendance at Evidentiary Hearing (lsal)
5/18/98	–	Evidentiary Hearing reset for 9:30 a.m. on 5/29/98 before Judge Robert R. Merhige Jr. (walk)
5/18/98	116	ORDER directing the Warden of Mecklenburg Correctional Center to produce Petitioner (Inmate Number 165709) to the Marshal on May 29, 1998 at 9:30 a.m. for an evidentiary hearing in this matter (Signed by Judge Robert R. Merhige Jr.) A copy was faxed to the Warden this date and certified copies were mailed to the Warden, to the Virginia Department of Corrections, and to counsel of record. (walk)
5/18/98	117	Response by J. D. Netherland to [114-1] petition for writ of habeas corpus ad

		testificandum (lsal) [Entry date 05/19/98]
5/18/98	118	RESPONSE by J. D. Netherland to [115-1] motion by Michael Wayne Williams for Issuance of Subpoena to Judge Robert G. Woodson, Jr. for Attendance at Evidentiary Hearing (lsal) [Entry date 05/19/98]
5/19/98	119	RESPONSE by Michael Wayne Williams to [113-1] motion by J. D. Netherland, Warden, respondent, to Stay and for Expedited Consideration by Michael Wayne Williams (lsal)
5/19/98	120	REPLY by Michael Wayne Williams to response to [115-1] motion by Michael Wayne Williams for Issuance of Subpoena to Judge Robert G. Woodson, Jr. for Attendance at Evidentiary Hearing (lsal)
5/20/98	121	MOTION by J. D. Netherland to Quash Subpoenas (lsal)
5/20/98	–	LETTER from USCA to counsel in re: completing counsel of record forms and returning. (lsal)
5/21/98	122	RESPONSE by Michael Wayne Williams to [121-1] motion by J. D. Netherland to Quash Subpoenas Duces Tecum (lsal)
5/22/98	–	Evidentiary Hearing reset for 9:30 a.m. on 6/2/98 before Judge Robert R. Merhige Jr. (walk) [Entry date 05/27/98]
5/26/98	123	PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW by J. D. Netherland (submitted in response to

Order of Court and received in Clerk's Office at 12:04 p.m.) (lsal)

5/26/98 124 PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW by Michael Wayne Williams (lsal)

5/27/98 125 AMENDED ORDER the Warden of Mecklenburg Correctional Center shall deliver custody of the petitioner, Michael Wayne Williams #165709, to the U.S. Marshal at the U.S.D.C., 1000 E. Main Street, Richmond, Virginia on June 2, 1998 at 9:30 a.m. Clerk to send copies to petitioner, Warden of Mecklenburg Correctional Center, Department of Corrections for the Commonwealth of Virginia, and to the United States Marshal (signed by Judge Robert R. Merhige Jr.) Copies Mailed: yes. (lsal)

5/27/98 126 ORDER the evidentiary hearing is CONTINUED to June 2, 1998 at 9:30 a.m. (signed by Judge Robert R. Merhige Jr.) Copies Mailed: yes. (lsal)

5/27/98 – Copy of 5/27/98 Order mailed to: Petitioner Michael Wayne Williams; Warden, Mecklenburg Correctional Center; Dept. of Corrections for the Comm. of Va. attn: Director Ronald Angelone; and hand delivered to the United States Marshal. (lsal)

5/28/98 127 USCA Order that the Warden's application for an emergency stay is granted and the matter is remanded for further proceedings. On remand, the district court must determine whether, under

AEDPA, Williams is entitled to an evidentiary hearing on these claims; Until the district court has evaluated Williams' entitlement to an evidentiary hearing under the strict requirements of AEDPA, we believe it would be premature to act on any petition for a writ of mandamus and prohibition;'. (adoh) [Edit date 05/28/98]

5/29/98 – The Warden of Mecklenburg Correctional Center (Jerry Davis at (804) 738-6114 x147) was notified by telephone today that Order to produce Mr. Williams for June 2nd has been withdrawn. (walk)

5/29/98 128 REPLY by Michael Wayne Williams In Further Support of His Petition for a Writ of Habeas Corpus and of his Motion for an Evidentiary Hearing (lsal)

5/29/98 129 Response by J. D. Netherland to Stay Order Issued By the Court of Appeals (This Court invited the parties to file any additional briefs in the case no later than 5:00 p.m. on May 29, 1998). (lsal)

6/3/98 130 MEMORANDUM OPINION (signed by Judge Robert R. Merhige Jr.) Copies Mailed: yes. (lsal)

6/3/98 131 ORDER VACATING [95-1] order; petitioners federal habeas petition is DISMISSED in its entirety; DENYING AS MOOT [99] Motion for Summary Judgment by respondent; at expiration of 30 days unless an appeal has been filed, the Clerk shall return to the appropriate repository such records as the Court has

		received in reference to this cause; the action is dismissed with prejudice; DENYING AS MOOT all remaining motions not previously ruled on by the Court: [121-1] motion by J. D. Netherland to Quash Subpoenas, [115-1] motion by Michael Wayne Williams for Issuance of Subpoena to Judge Robert G. Woodson, Jr. for attendance at Evidentiary Hearing, and [113-1] motion by J. D. Netherland, Warden, respondent, to Stay and for expedited Consideration (signed by Judge Robert R. Merhige Jr.) Copies Mailed: yes. (lsal)
6/3/98	–	Case closed (lsal)
6/8/98	132	CJA 30, Appointment of Counsel, Barbara L Hartung, Esquire to represent Petitioner Michael Wayne Williams, Voucher #D40641, Final Voucher (Signed by the Clerk) (Nunc Pro Tunc 11/15/96) (walk)
6/17/98	133	MOTION with Memorandum in Support by Michael Wayne Williams to Alter or Amend [130-1] memorandum opinion and [131-1] order (lsal)
6/22/98	134	RESPONSE In Opposition by J. D. Netherland to [133-1] motion by petitioner to Alter or Amend [130-1] memorandum opinion and [131-1] order (lsal)
6/22/98	135	MEMORANDUM in support of [134-1] response in opposition to petitioner's Rule 59(E) Motion to Alter or Amend by J. D. Netherland (lsal)
6/23/98	136	ORDER the case is hereby REASSIGNED to the Honorable James R. Spencer.

		(signed by Judge James R. Spencer) Copies Mailed: yes. (lsal)
6/23/98	–	CASE reassigned to Judge James R. Spencer per Order entered 06/23/98. (lsal)
8/25/98	137	REPLY by Michael Wayne Williams to response to [133-1] motion to Alter or Amend [130-1] memorandum opinion and [131-1] order of June 3, 1998. (lsal) [Entry date 08/26/98]
8/27/98	138	Response by J. D. Netherland to [137-1] Supplemental Memorandum response by Michael Wayne Williams dated August 25, 1998. (lsal)
10/14/98	139	CJA 30 Authorization to Pay Barbara L. Hartung, Esq. $20,545.25 Voucher #D40641, No. 2 (Signed by Judge James R. Spencer) (lmcd)
11/12/98	140	ORDER denying [133-1] motion to Alter or Amend [130-1] memorandum opinion and [131-1] order (signed by Judge James R. Spencer) Copies Mailed: yes (bbay)
11/25/98	141	MOTION with Memorandum in Support by Michael Wayne Williams to Alter or Amend [140-1] order (lsal) [Entry date 11/27/98]
11/30/98	142	RESPONSE by J. D. Netherland to [141-1] motion to Alter or Amend [140-1] order by Michael Wayne Williams (bbay)
12/4/98	143	REPLY by Michael Wayne Williams to response to [141-1] motion to Alter or Amend [140-1] order by Michael Wayne Williams (jpar)

12/14/98 144 NOTICE OF APPEAL OF [21-1] order, [24-1] order, [33-1] order, [87-1] order, [0-0] so order, [95-1] order, [112-1] order, [131-1] order, [140-1] order by Michael Wayne Williams. TPO package given to attorney. NO FEE PAID. (lsal) [Entry date 12/15/98]

12/15/98 145 ORDER denying [141-1] motion to Alter or Amend [140-1] order (signed by Judge James R. Spencer) Copies Mailed: yes. (lsal)

12/23/98 146 AMENDED NOTICE OF APPEAL amending the [144-1] appeal by Michael Wayne Williams (lsal) [Entry date 12/28/98]

March 22, 1999 Appellant's Brief filed.

April 14, 1999 Respondent's Brief filed.

May 5, 1999 Appellant's Reply Brief filed.

August 2, 1999 Opinion of the Fourth Circuit Court of Appeals affirming and denial of the writ by the district court. Williams v. Taylor, No. 99-1.

October 28, 1999 Order granting petition for writ of certiorari and motion to proceed *in forma pauperis*.

VIRGINIA:

COUNTY OF CUMBERLAND, TO-WIT:

In the Circuit Court of the said County, the Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Cumberland, duly summoned to attend said Court for the said County, upon their oaths present that MICHAEL WAYNE WILLIAMS on or about the 27th day of February in the year nineteen hundred and ninety-three in the said County and within the jurisdiction of said Court, and within one year prior to the finding of this indictment.

> did, willfully, deliberately and with premeditation, feloniously, kill and murder Mary Elizabeth Keller in the commission of robbery of Mary Elizabeth Keller [and Morris C. Keller /s/ JS] while armed with a deadly weapon in violation of Section 18.2-31(4) of the Code of Virginia, 1950, as amended

against the peace and dignity of the Commonwealth of Virginia.

Witness: James E. Tyree, Virginia State Police
Claude B. Meinhard,
Cumberland Sheriff's Office

Sworn in Court and sent before the Grand Jury.

/s/ Carol O. Henshaw, Deputy
Clerk

VIRGINIA:

COUNTY OF CUMBERLAND, TO-WIT:

In the Circuit Court of the said County, the Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Cumberland, duly summoned to attend said Court for the said County, upon their oaths present that MICHAEL WAYNE WILLIAMS on or about the 27th day of February in the year nineteen hundred and ninety-three in the said County and within the jurisdiction of said Court, and within one year prior to the finding of this indictment.

did, willfully, deliberately and with premeditation, feloniously, kill and murder Morris C. Keller, Jr. [and Mary Elizabeth Keller /s/ JS] while armed with a deadly weapon in violation of Section 18.2-31(4) of the Code of Virginia, 1950, as amended

against the peace and dignity of the Commonwealth of Virginia.

Witness: James E. Tyree, Virginia State Police
Claude B. Meinhard,
Cumberland Sheriff's Office

Sworn in Court and sent before the Grand Jury.

/s/ Carol O. Henshaw, Deputy
Clerk

VIRGINIA:

COUNTY OF CUMBERLAND, TO-WIT:

In the Circuit Court of the said County, the Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Cumberland, duly summoned to attend said Court for the said County, upon their oaths present that MICHAEL WAYNE WILLIAMS on or about the 27th day of February in the year nineteen hundred and ninety-three in the said County and within the jurisdiction of said Court, and within one year prior to the finding of this indictment.

did, willfully, deliberately and with premeditation, feloniously, kill and murder Morris C. Keller, Jr. subsequent to [the rape of /s/ J.S.] Mary Elizabeth Keller in violation of Section 18.2-31(5) of the Code of Virginia, 1950, as amended

against the peace and dignity of the Commonwealth of Virginia.

Witness: James E. Tyree, Virginia State Police
Claude B. Meinhard,
Cumberland Sheriff's Office

Sworn in Court and sent before the Grand Jury.

/s/ Carol O. Henshaw, Deputy
Clerk

VIRGINIA:

COUNTY OF CUMBERLAND, TO-WIT:

In the Circuit Court of the said County, the Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Cumberland, duly summoned to attend said Court for the said County, upon their oaths present that MICHAEL WAYNE WILLIAMS on or about the 27th day of February in the year nineteen hundred and ninety-three in the said County and within the jurisdiction of said Court, and within one year prior to the finding of this indictment.

did, willfully, deliberately and with premeditation, feloniously, kill and murder Mary Elizabeth Keller subsequent to [the rape of /s/ JS] Mary Elizabeth Keller in violation of Section 18.2-31(5) of the Code of Virginia, 1950, as amended

against the peace and dignity of the Commonwealth of Virginia.

Witness: James E. Tyree, Virginia State Police
Claude B. Meinhard,
Cumberland Sheriff's Office

Sworn in Court and sent before the Grand Jury.

/s/ Carol O. Henshaw, Deputy
Clerk

VIRGINIA:

COUNTY OF CUMBERLAND, TO-WIT:

In the Circuit Court of the said County, the Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Cumberland, duly summoned to attend said Court for the said County, upon their oaths present that MICHAEL WAYNE WILLIAMS on or about the 27th day of February in the year nineteen hundred and ninety-three in the said County and within the jurisdiction of said Court, and within one year prior to the finding of this indictment.

did, willfully, deliberately and with premeditation, feloniously, kill and murder Morris C. Keller, Jr. and Mary Elizabeth Keller as a part of the same act or transaction in violation of Section 18.2-31(7) of the Code of Virginia, 1950, as amended

against the peace and dignity of the Commonwealth of Virginia.

Witness: James E. Tyree, Virginia State Police
Claude B. Meinhard,
Cumberland Sheriff's Office

Sworn in Court and sent before the Grand Jury.

/s/ Carol O. Henshaw, Deputy
Clerk

VIRGINIA:

IN THE CIRCUIT COURT OF THE
COUNTY OF CUMBERLAND

Commonwealth of Virginia	Criminal No.
V.	
MICHAEL WAYNE WILLIAMS	

MOTION FOR DISCOVERY AND INSPECTION

Comes now defendant, Michael Wayne Williams, by and through counsel, pursuant to the Sixth, Eighth and Fourteenth Amendments of the United States Constitution, and section Eight and Eleven of Article I of the Constitution of Virginia, and pursuant to Rule 3A:11 of the Rules of the Supreme Court of Virginia, and moves for an order permitting discovery and inspection. In this motion, wherever reference is made to "the Commonwealth," the request shall be deemed also to request the same facts and information of whatever form, source or nature which are within the knowledge, custody and/or control of (1) the Commonwealth's Attorney or his assistants, (2) the Virginia State Police, (3) the Cumberland County Sheriff's Department, (4) the Prince Edward Sheriff's Department (5) the Prince Edward Police Department, (6) any other law enforcement departments or agencies of this or any other state or of the federal government which the Commonwealth's Attorney believes might reasonably be expected to have such information, or (7) any person whom the Commonwealth's Attorney may call as witnesses in this case.

A. The defendant moves for an Order requiring the Commonwealth's Attorney to give defendant access to the following:

1. All alleged confessions or statements of any kind made by defendant or any alleged co-defendant or co-conspirator that may be pertinent to this case in every media in which each such confession or statement may exist (in substance or verbatim), including without limitation audio tape, video tape, film, stereotype, short-hand notes, print, typing or handwriting. If any version (in any medium) of any such confession or statement previously existed and has since been lost or destroyed, the facts surrounding each such occurrence, including without limitation the reasons therefore, shall be fully disclosed to the defendant. The statements would include declarations purportedly uttered by any alleged co-defendant or co-conspirator in furtherance of an alleged common and illegal design as well as any statements of alleged co-defendants or co-conspirators which the Commonwealth claims are attributable to defendant as an alleged co-defendant or co-conspirator, giving the name of the person allegedly making the statements, the date and circumstance under which the statement's were allegedly made, and the text or substance of the statements.

* * *

B. The defendant moves for an Order directing the Commonwealth forthwith to make inquiry and disclose all of the following within the possession, custody or control of the Commonwealth, or the existence of which is known or by the exercise of due diligence could become known to the Commonwealth.

1. Any statements allegedly made by any person which show or tend to show any information within the knowledge or possession of the Commonwealth which tends to be exculpatory, mitigating or otherwise favorable to defendant.

2. Any other information of whatever form, source or nature which tends to be exculpatory, mitigating or otherwise favorable to defendant or which would tend to reduce the penalty which he might suffer, should he be convicted in this cause.

3. Any and all records and information revealing prior felony convictions or guilty verdicts or juvenile adjudications attributed to each witness to be called by the Commonwealth at any hearing in or trial of this case, including but not limited to relevant "rap sheets."

4. Any and all records and information revealing prior misconduct or bad acts attributed to any witness.

5. Any and all consideration or promises of consideration given to or on behalf of any potential witness or expected or hoped for by any witness. By "consideration" defendant refers to absolutely anything, whether bargained for or not, which arguably could be of value or use to such a potential witness or to persons of concern to such a witness, including but not limited to formal or informal, direct or indirect; leniency, favorable treatment, recommendation or other assistance with respect to any pending or potential criminal, parole, probation, pardon, clemency, civil, tax court, court of claims, administrative or other dispute with the Commonwealth, with another sovereign, with any local government, with any other authority or with any other parties; criminal, civil or tax

immunity grants' witness fees or special witness fees; provisions of food, clothing, shelter, transportation, legal services or other benefits; placement in a "witness protection program" or equivalent benefits; informer status of any potential witness; and anything else which arguably could reveal an interest, motive or bias in any witness in favor of the Commonwealth or against defendant or act as an inducement to testify or to color testimony.

6. Any and all threats, express or implied, direct or indirect or other coercion made or directed against any potential witness, any criminal prosecutions, investigations, or potential prosecutions pending or which could be brought against any potential witness; any probationary, parole, deferred prosecution or custodial status of any potential witness; and any civil, tax court, court of claims, administrative, or other pending or potential legal disputes or transactions involving any potential witness with the Commonwealth or over which the Commonwealth has real, apparent or perceived influence.

* * *

9. Any and all information in any personnel files for any potential witness which arguably could be helpful or useful to the defense in impeaching or otherwise detracting from the probative force of the Commonwealth's evidence, including without limitation the personnel file of any co-defendant or co-conspirator who is a potential witness and any official internal affairs, internal investigation or public integrity investigation files relating to or connected with each potential witness who was or is a law enforcement officer.

10. Any and all other records and/or information which arguably could be helpful or useful to the defense in impeaching or otherwise detracting from the probative force of the Commonwealth's evidence or which arguably could lead to such records or information.

11. Disclosure of whether any potential witness has ever (i) taken a polygraph test, (ii) submitted to a drug interview, (iii) submitted to an interview under hypnosis, or (iv) been the subject of a psychological stress evaluation (PSE) to determine deception.

* * *

16. Any other evidence of the circumstances of the crime or the character and record of any party to the crime that would tend to show that another party was more culpable, more dominant or more dangerous than the defendant.

* * *

Wherefore, the defendant respectfully prays that the court order that any information relevant to trial of this case that the Commonwealth does not make available to the defendant through discovery be reviewed by the court *in camera* to determine whether the information is constitutionally required to be disclosed to the defendant in any part of the capital trial.

In sum, as grounds for this motion the accused states:

1) Defendant has been charged with the offense of capital murder under Va. Code Ann. 18.2-31( ).

2) In order for the defendant to be afforded effective assistance of counsel, and to ensure the heightened

degree of reliability demanded in capital cases, the Commonwealth must be ordered to disclose all exculpatory evidence, and all information necessary for effective preparation and defense.

MICHAEL WAYNE WILLIAMS

By /s/ R. Donald Ford
Counsel

By /s/ Lucretia A. Carrico
Co-Counsel

CERTIFICATE

We hereby certify that we have mailed, postage prepaid, a true and exact copy of the foregoing Motion to Robert G. Woodson, Jr., Attorney for the Commonwealth, Post Office Box 165, Cumberland, Virginia 23040, this 23rd day of June, 1993.

/s/ R. Donald Ford
R. Donald Ford

/s/ Lucretia A. Carrico
Lucretia A. Carrico

Filed in the Clerk's Office of the Circuit Court of Cumberland County, Virginia.
This the 24th day of June 1993 at 9A.m.

/s/ Imogene W. Illegible
Clerk

Virginia:

In the Circuit Court of Cumberland County, July 26, 1993.

Commonwealth of Virginia

Vs. Order — Offense Date: 2-27-93

Michael Wayne Williams — Birth Date: 1-25-68
SSN: 230-25-0805

This day came the defendant, Michael Wayne Williams, with his counsel, R. Donald Ford, Jr. and Lucretia Carrico, and presented to the Court his motion for Discovery and Inspection; also came the Attorney for the Commonwealth of the County of Cumberland in opposition to said motion.

It appearing to the Court upon review of the aforesaid motion and argument of counsel in this matter, that such motion for discovery moves for discovery of some material which should be denied, it is therefore ordered that the Attorney for the Commonwealth of the County of Cumberland shall comply with all of the requirements of discovery and inspection as set forth in the Rules of the Virginia Supreme Court and case law.

This motion is continued on the docket for any further issues raised by defense counsel or by the Commonwealth's Attorney.

ENTER: Sept 15, 1993

/s/ Illegible
Judge

Seen and Objected To:

/s/ R. Donald Ford, Jr.
R. Donald Ford, Jr.

/s/ Lucretia Carrico
Lucretia Carrico

[Seen] /s/ Warren Von Schuch
Warren Von Schuch

[Seen] /s/ Robert G. Woodson, Jr.
Robert G. Woodson, Jr.

[Entered 12/695]

VIRGINIA:

IN THE CIRCUIT COURT
FOR THE COUNTY OF CUMBERLAND

COMMONWEALTH OF VIRGINIA

v.

MICHAEL WAYNE WILLIAMS

THE HONORABLE JOHN R. SNODDY, JR., PRESIDING

Trial – Day One
Cumberland, Virginia
January 3, 1994

APPEARANCES:

ROBERT G. WOODSON, ESQUIRE
WARREN B. VON SCHUCH, ESQUIRE
Count of Cumberland
Cumberland, Virginia
(Representing the Commonwealth)

R. DONALD FORD, JR., ESQUIRE
LUCRETIA A. CARRICO, ESQUIRE
2727 Buford Road, Suite D
Richmond, Virginia 23235
(Representing the Defendant)

* * *

[115] The three prospective jurors entered the Courtroom and were sworn by the Deputy Clerk.)

THE COURT: State your name.

MR. CHICK: Dwayne Chick.

THE COURT: What's your name?

MS. CARTER: Ruby Carter.

MS. STINNETT: Bonnie Stinnett.

THE COURT: Now, I want all of you all to answer these questions when you are asked questions. See, it has to go on the record, so speak up. If I ask you something, don't shake your head or anything, just answer yes or no. And if I ask you something else, to elaborate, then you can [116] do that. This involves, again, Commonwealth versus Michael Wayne Williams. He's charged with twelve felonies. Included is capital murder, or rather murder involved with rape. He's also charged with arson, and robbery, and abduction of Mr. and Mrs. Keller. And I have the following questions for you: Are you related by blood or marriage to the defendant, Michael Wayne Williams, or the alleged victims of these offenses, Morris C. Keller. Jr. and Mary Elizabeth Keller, or any of the attorneys, Mr. Woodson, Mr. Von Schuch, Mr. Ford. or Ms. Carrico.

JURORS: (No affirmative response.)

THE COURT: Are you related by blood or marriage to any of these people?

JURORS: (No affirmative response.)

THE COURT: Have you or any member of your immediate family ever been represented by any of the aforementioned attorneys?

JURORS: (Two have no affirmative response.)

MR. CHICK: Yes.

THE COURT: Who have you been represented by?

MR. CHICK: My daddy's been represented by –

THE COURT: I'm not talking about your daddy. I asked you if you had ever been represented.

MR. CHICK: Oh, no, sir.

THE COURT: Are you personally acquainted with [117] the defendant or were you personally acquainted with the deceased victims?

MR. CHICK: Yes, I knew them. They used to be my neighbors.

THE COURT: Who?

MR. CHICK: The Kellers.

THE COURT: Would that have any effect on your ability to serve as an impartial juror in this case?

MR. CHICK: No.

THE COURT: Have you or any member of your immediate family ever been the victim of a murder, robbery or rape?

JURORS: (No affirmative response.)

THE COURT: Do you have any interest in this trial or the outcome of the case?

MR. CHICK: Yes, I –

THE COURT: What?

MR. CHICK: I mean, yeah. Yes.

THE COURT: Gentlemen, do you have any suggestion [sic]?

MR. FORD: If I might talk with my client Just a minute?

THE COURT: I don't want to taint the other jurors.

MR. VON SCHUCH: Judge, talking with Mr. Ford, I [118] thought we might do it mutually, but I think Mr. Ford would like to ask him just a few questions to verify some things before he agrees to anything. So I guess what we would do at this point is just go ahead and continue with the questioning and then –

THE COURT: Then we'll talk about that afterwards.

MR. FORD: That's fine. Judge.

THE COURT: Have you acquired any information about any of these offenses of the defendant, Michael Wayne Williams, from the news media or any other source? That is, have you read any reports on this case in any newspaper or heard any reports on this case either on the radio or television?

MS. STINNETT: I have not.

MS. CARTER: I've heard it on the radio and in the newspaper.

MR. CHICK: I've heard it on the radio.

THE COURT: Have you formed any opinion as to the guilt or innocence by virtue of what you have heard or read?

JURORS: (No affirmative response.)

THE COURT: Considering what you have read about this case, do you believe that you can enter the jury box with an open mind and wait until the entire case is [119] presented before you reach any fixed opinion or conclusion concerning the guilt or innocence of the accused?

JURORS: (All answered affirmatively.)

THE COURT: All three answered yes. Do you understand that an indictment returned by a Grand Jury is merely a formal legal proceeding drawn up alleging the commission of a crime and the fact that a Grand Jury has returned an indictment against the defendant is not evidence against him and you should not consider it in determining guilt or innocence of the accused? Do you all understand that?

JURORS: (All answered affirmatively.)

THE COURT: It is the law of the Commonwealth of Virginia that no one is to be convicted of a crime unless and until his guilt is proven beyond a reasonable doubt. Will you, in accordance with the law – that is, would you, as a juror, refuse to convict anyone of a crime unless and until his guilt has been proven to your satisfaction beyond a reasonable doubt?

JURORS: (All answered affirmatively.)

THE COURT: All three say yes?

JURORS: (All answered affirmatively.)

THE COURT: Do you understand that the defendant is presumed to be innocent? This presumption

of innocence remains with the defendant throughout the trial? Do you [120] understand that?

JURORS: (All answered affirmatively.)

THE COURT: Do you understand that in order to convict the defendant in a criminal case, it requires the unanimous belief of the jury that the evidence establishes the guilt of the defendant beyond a reasonable doubt and, further, that a decision is not to be reached in a criminal case until all of the evidence has been presented, the instructions of the law have been given to the jury, and the arguments of counsel have been made? Do you understand that?

JURORS: (All answered affirmatively.)

THE COURT: Are you sensible of any bias or prejudice towards or against the Commonwealth of Virginia or the defendant –

JURORS: (No affirmative response.)

THE COURT: – or any of the attorneys participating?

JURORS: (No affirmative response.)

THE COURT: Have you ever served on a jury before?

JURORS: (Two have no affirmative response.)

MS. CARTER: Yes, I have.

THE COURT: How long has it been since you've served?

[121] MS. CARTER: Four or five years ago.

THE COURT: Do you know of any reason whatsoever why you cannot give a fair and impartial trial to both the Commonwealth and the defendant based solely on the law and the evidence?

JURORS: (No affirmative response.)

THE COURT: The defendant in this case is charged with capital murder, which is an offense which carries a possibility of punishment by death should he be found guilty of that offense. Evidence will be presented first on the question of the defendant's guilt or innocence. In other words, there are almost two trials. First you will hear evidence on the guilt or innocence. If the defendant is found guilty of capital murder, the jury shall so state in their verdict, and then evidence will be presented by the Commonwealth and the defendant as to whether the sentence should be death or life imprisonment. If the jury finds the defendant guilty of a lesser offense on the charge of capital murder, then the jury will impose a sentence within the limits given in the instructions of the Court. Do you understand that?

JURORS: (All answered affirmatively.)

THE COURT: Do any of you have any religious, conscientious or moral objections to the imposition of the death penalty in a proper case?

[122] JURORS: (No affirmative response.)

THE COURT: If the jury finds the defendant guilty of capital murder, would you automatically vote to impose the death penalty; automatically?

JURORS: (No affirmative response.)

THE COURT: Would you automatically refuse to give the death penalty?

JURORS: (No affirmative response.)

THE COURT: Would you be willing to wait until you have heard such additional evidence as might be presented as to the proper sentence and then impose a sentence which appears to be proper on the evidence and the instructions of the Court?

MR. CARNES: (All answered affirmatively).

THE COURT: This trial may or may not become lengthy. Would the length of the trial affect your ability as a juror to render an impartial decision after a full consideration of the evidence?

JURORS: (No affirmative response.)

THE COURT: This is a case involving capital murder. I expect that there will be introduced at trial pictures of a graphic nature of the victims. There will also be graphic testimony about the murders. Would the graphic nature of the evidence affect your ability as a juror to render an impartial decision after a full [123] consideration of the evidence?

JURORS: (No affirmative response.)

THE COURT: Are any of you involved in law enforcement?

JURORS: (No affirmative response.)

THE COURT: Are any of you related to the following people who may be called as witnesses: Robert W. Scanlon; Lisa C. Schiermeier; Ann D. Jones; Deborah

Kay; Robert B. Hallett; William Massella, III; John Howard Williams; George Li, L-i; Special Agent R. A. Jenkins; Special Agent William C. Hicks; Special Agent Richard Holt; Special Agent James Tyree; Verena Ann James; Jose Albert Lozano: Barbara Waycaster Dunn; Robert Dean Ramey; Tammy Lyan Tolley; Elizabeth K. Jones; Sharon Lee Sine; David Edward Sine; Special Agent Wayne Hipkins; Jeffrey Alan Cruse; Deputy Sheriff Claude Meinhard; Special Agent Herbert Chambers; Special Agent James Adcock; Trooper John Ewers; Glenn Haskins; Special Agent M. Joseph Ritchie; Mary Carter Williams; Raymond J. Williams; Patricia Costable Atkinson; Agnes Villalobos; Special Agent Barry Keesee; Agnez Devina Piper; Mary Nieves; Richard B. Horn, Jr.; Martha Keller; James Keller; Carolyn Lipscomb; John Williams; Warren Green; Janet McCay; Laura St. John; Gwen Marshall; Arthur Howard Williams; Thomas Spry; Dr. Dewey Cornell?

[124] JURORS: (No affirmative response.)

MR. VON SCHUCH: Mr. Chick, is it?

MR. CHICK: Yes.

MR. VON SCHUCH: And I'll get to you, Ms. Stinnett and Ms. Carter, in just a bit. I just have a few additional questions to what the Court asked you. I noticed that during the voir dire you indicated to the Court that you used to live next to the Kellers?

MR. CHICK: Yes.

MR. VON SCHUCH: How long did you live next to them? For what period of time did you know them?

MR. CHICK: About fifteen years.

MR. VON SCHUCH: And what was your relationship with them?

MR. CHICK: Well, I just spoke to them when I saw them.

MR. VON SCHUCH: You weren't personal friends with them? You didn't stay at their house frequently?

MR. CHICK: No.

MR. VON SCHUCH: Just kind of a neighbor relationship?

MR. CHICK: Yes.

MR. VON SCHUCH: There was a point in time, I believe, when the Williams' used to live near the Kellers. Did you know John Williams?

[125] MR. CHICK: Yeah, I knew of him. I'd see him walking down the road.

MR. VON SCHUCH: You know who he is?

MR. CHICK: Yes.

MR. VON SCHUCH: Have you ever talked to him?

MR. CHICK: Yeah, I used to speak to him.

MR. VON SCHUCH: Were you two friends? Did you do anything together –

MR. CHICK: No.

MR. VON SCHUCH: – play baseball, go to school, anything like that?

MR. CHICK: No.

MR. VON SCHUCH: What about the defendant, Mr. Michael Williams?

MR. CHICK: Well, yeah, I used to see him in the stores, and walking down the road.

MR. VON SCHUCH: And how long have you known him?

MR. CHICK: I guess about five years, I'd say, because he moved in with Wayne – His mother moved in with one of my neighbors, Wayne Lipscomb, and then that's how come they moved down there.

MR. VON SCHUCH: And what were the types of things that you and the defendant used to do?

MR. CHICK: We didn't do nothing. I just spoke to him when I saw him in the store.

[126] MR. VON SCHUCH: Just, "Hi. How are you?"

MR. CHICK: Yeah.

MR. VON SCHUCH: And that's all?

MR. CHICK: Yes.

MR. VON SCHUCH: Now, you understand that there is some significant decisions that you may have to make if you are seated as a member of this jury? Do you understand that?

MR. CHICK: Yes.

MR. VON SCHUCH: You know the Kellers?

MR. CHICK: Yes.

MR. VON SCHUCH: I mean, you lived next to them for fifteen years.

MR. CHICK: Yes.

MR. VON SCHUCH: You know the defendant?

MR. CHICK: Yes.

MR. VON SCHUCH: All right. And you understand you may be asked to sentence him to death, based on what he did to the Kellers?

MR. CHICK: Yes.

MR. VON SCHUCH: In view of all that. do you think you can sit fairly and impartially and decide the evidence in this case?

MR. CHICK: Yeah, I believe so. They didn't actually live next to me, but they lived like a quarter of [127] a mile up.

MR. VON SCHUCH: What I'm talking about is this, is that you seem to know all the parties. You obviously, you thought he was a nice guy and you used to say hi to him. and you knew his brother, you probably liked him and said hi to him, and on the other hand you lived next to the Kellers and you knew who they were and you would wave to them when you would see them.

MR. CHICK: Yes.

MR. VON SCHUCH: My question for you is that in view of the fact that you're going to hear a lot of gruesome things that happened to the Kellers, on the other hand you're going to have to pass judgment on this gentleman here, who you've known for five years and say hi to, is that going to cause you any problem? Are you going to be able to stand there and pass a proper judgment; are you going to be able to listen to this evidence fairly and impartially and do what's right?

MR. CHICK: I don't see no problem. I believe I could.

MR. VON SCHUCH: Well, you say "You believe." Can you or can't you?

MR. CHICK: Yeah.

MR. VON SCHUCH: Do you have any reservation whatsoever?

[128] MR. CHICK: No.

MR. VON SCHUCH: Ms. Carter, I noticed that you indicated you had prior jury service?

MS. CARTER: Yes.

MR. VON SCHUCH: And that was about, I think you said, four or five years ago?

MS. CARTER: Yes.

MR. VON SCHUCH: Was that a criminal or a civil case?

MS. CARTER: Civil.

MR. VON SCHUCH: Other than that, you've never sat in a criminal case before? You've never been through that experience?

MS. CARTER: No.

MR. VON SCHUCH: When the Court was talking to you about the two-part trial, and the fact that the first part of it will be solely a determination as to whether the defendant is guilty or not guilty of capital murder, and the second part of it you'll hear additional evidence in mitigation and then you'll have to decide one of two possible penalties. And I noticed that when the Court indicated would you automatically impose life, you seemed to hesitate a little bit when you answered that question. Is there any particular reason for that? Could you fairly consider the death sentence in this case?

[129] MS. CARTER: Yes.

MR. VON SCHUCH: Was there a reason for your hesitation or –

MS. CARTER: No, no reason.

MR. VON SCHUCH: – or was I picking up something that wasn't there?

MS. CARTEL: Yeah. Like I said, after he finished the other part, then I put it together.

MR. VON SCHUCH: In other words, what we're asking you is, and the type of juries that we want are people who are going to be fair. That's all we're asking for, is a fair shake. And if you have any predisposition towards life or towards death, then how fairly are you going to be able to Judge that evidence in making

that decision? We want to make sure that you're going to be able to do that.

MS. CARTER: I understand what you're talking about.

MR. VON SCHUCH: Okay, and there was no – You understand?

MS. CARTER: No, I understand.

MR. VON SCHUCH: Thank you, Ms. Carter. That's all the questions I have.

MR. FORD: Good afternoon. As with any Commonwealth's Attorney and defense attorney, I think I saw [130] the hesitation the other way. The Judge asked you whether you would automatically impose the death penalty and you hesitated before you answered, it appeared to me. And again, I guess my question is, you have to sit in judgment of Mr. Williams and if the Commonwealth, in your mind, proves beyond a reasonable doubt that he's guilty of capital murder. then you must then decide, based on evidence that you hear. whether to inflict death or not. And I need to know whether you would automatically give Mr. Williams death in that situation, if you found him guilty of capital murder beyond a reasonable doubt, or would you be substantially impaired from considering life, I guess is the other way to say it? It's kind of a backwards kind of situation. If you felt that capital murder was such a bad crime that it deserved death, without hearing anything else about it, then we need to know about that at this point.

THE COURT: I believe you're leaving out again – I'd like for you, again, to state that there would be further evidence given then.

MR. FORD: There would be further evidence in the penalty phase.

THE COURT: I think to be fair to them; that's the reason it's all in one instruction.

MR. FORD: Right. Would any of you vote [131] automatically for the death penalty, after hearing evidence in both the guilt phase and the penalty phase, if you found him guilty? I'm not suggesting that you will or won't, but if you find him guilty beyond a reasonable doubt in the capital murder phase, and then after hearing evidence in the penalty phase, would you automatically vote for death?

MR. VON SCHUCH: Judge, I would object to that. I don't think that, the question. The question is after they have convicted him and after they've found him guilty of capital murder. would they automatically impose – Heck, after they hear the evidence in the penalty phase, you know, there's no telling what they may want to do, but that's not the relevant issue. The relevant issue is, are they going to listen to the evidence fairly; would they automatically vote after finding him guilty, not after they hear the evidence in the penalty phase.

MR. FORD: I asked that question and the Court advised me to ask it another way.

THE COURT: Well, the thing about it is, they wouldn't have any opportunity to do that.

MR. FORD: I'm sorry, Judge.

THE COURT: They wouldn't have any opportunity until they had heard the other; would they automatically at that time. Isn't that right, gentlemen?

MR. VON SCHUCH: Yes, sir, Judge. I understood [132] his question to be, after they have convicted him of capital murder and after they had heard all of the evidence in the penalty phase, would they automatically sentence him to death. Well, that evidence that they may hear in the penalty phase may affect exactly what they way do, but that's not the issue, as long as they've listened to it fairly and impartially and listen to others before reaching their decision. But the issue is after he's convicted.

THE COURT: All right, go ahead. Ask it the way you asked it first.

MR. FORD: Back to the question that I asked before, and I think you've been asked it a couple times, but you hesitated when the Judge asked you, that if you find him guilty of capital murder beyond a reasonable doubt, would you automatically, based on that finding, give him the death penalty.

MS. STINNETT: I hesitated because I wanted a clarification of the evidence. When the statement was first made about automatically, I hesitated then because I didn't understand that that would be after the evidence. In other words, knowing that the evidence had been presented would be very important to me, before automatically doing anything. Does that make sense?

MR. FORD: Well, the word "automatically" troubles me, I guess.

[133] MS. STINNETT: The word "automatic" troubled me, too.

MR. FORD: Well, and your response to the word "automatic" troubled me and I guess the question is, when you say evidence, after the evidence has been presented, there's a distinguishing between the evidence of guilt and the evidence after the penalty phase. If you would consider, right then and there, after the guilt phase, of giving him the death penalty without any further evidence, then obviously we've got a problem.

MS. STINNETT: No, I wouldn't automatically. I'm speaking for myself.

MS. CARTER: Well, that's the part, when he was asking, that's why I hesitated, too, because you said automatically; but, not, like I said, not automatically, until the evidence is presented.

MR. FORD: Even in the penalty phase, you could consider life – after convicting someone of capital murder, you could consider life after hearing evidence in the penalty phase, is that what I'm hearing from you?

MS. CARTER: Yes.

MS. STINNETT: Yes.

MR. FORD: Mr. Chick?

MR. CHICK: Not automatically. It depends on how bad the crime was and what all was done.

[134] MR. FORD: Well, let me ask – That leads to my next question. If you have a situation where there is a premeditated murder without any legal justification,

meaning no evidence of self-defense or intoxication or anything like that, and the murder is committed during the commission of a robbery or subsequent to the rape of one of the victims, would that fact pattern alone substantially impair your ability to decide this case or to consider, after all of the evidence is heard, giving Mr. Williams a consideration of life versus death?

MS. STINNETT: No, not that alone.

MR. FORD: Would that fact pattern be so upsetting to you that life would not be a possibility after hearing all of the evidence?

MS. CARTER: Let me think. No.

MR. FORD: But you hesitated again.

MS. CARTER: Like I say, in weighing the evidence. I'm – After the evidence is presented and you get, you know – I'll say no. I'll go with, you know, like life. It's confusing. I can't really –

THE COURT: She doesn't understand the question.

MS. CARTER: I don't.

MR. FORD: Well, I guess what I'm trying to ask you is that if that fact pattern – the premeditated murder without justification and it was in the commission of a [135] rape or subsequent to a rape or in the commission of a robbery – would those facts be so bad in your mind that you would block out any consideration of a life sentence?

MS. CARTER: Yes.

MR. FORD: You would block out any consideration of a life sentence. Mr. Chick, what about you?

MR. CHICK: No, I wouldn't.

MR. FORD: You would be able to consider life, based on that fact pattern?

MR. CHICK: Yeah – No – Yes.

MR. FORD: Yeah, no, yes. I mean, I don't mean to be –

THE COURT: Which is it, yes or no?

MR. CHICK: Yes.

MR. FORD: You would be able to consider a life sentence?

MR. CHICK: Yes.

THE COURT: And how about you, ma'am?

MS. STINNETT: Well, the way he asked the question was different from the way he asked it to him, the way I responded. I said no, because I'm saying that would not be all – I would not use that fact pattern to determine. That fact pattern alone would not –

MR. FORD: Okay. Well, that's my question.

MS. STINNETT: That's what I'm saying. Whereas [136] to him, it was put a little differently.

MR. FORD: Well, I think I put it to him just directly, if you had that fact pattern, could you consider life still?

MS. STINNETT: Yes.

MR. FORD: As the Judge has alluded, and as counsel has alluded, there will be two prongs or two trials to this. If you find him guilty beyond a reasonable doubt of capital murder – and again, I don't suggest that that will or won't happen – but if we get to the penalty phase there are certain factors in mitigation that we may present, so the next couple of questions that I ask you will be based upon those possible factors. The first would be Attention Deficit Disorder. Do any of you know what that is?

MS. STINNETT: Yes.

MR. FORD: Being a teacher, I would imagine you would. And again, I don't ask this to – I didn't know that much about it either, so I'm not trying to say you don't know anything – You don't know anything about that?

MS. CARTER: No, I don't.

MR. FORD: And how about you, Mr. Chick?

MR. CHICK: No.

MR. FORD: Also, drug and alcohol dependency. Do you or any member of your immediate family have experience [137] with problems with drug or alcohol dependency? Again, you don't have to say the name of the person, but a yes or no answer to that particular question.

JURORS: (No affirmative response.)

MR. FORD: And the third factor might be sexual abuse. And again, not directed to you, but have you or an immediate member of your family ever experienced

or been the victim of sexual abuse or a sexual abuse crime?

JURORS: (No affirmative response.)

MR. FORD: Mr. Chick, a couple of follow up questions, I guess, because you've got some personal involvement or you –

MR. CHICK: I've been thinking about it and I would feel kind of awkward sitting on a jury, because I know the whole family of the Kellers. I've sat here and thought about it and I would feel kind of awkward.

MR. FORD: I don't blame you. No further questions.

THE COURT: I'm going to excuse Mr. Chick, but the other two, would you all come forward, please? Follow the lady. Mr. Chick, you may be excused.

(The prospective jurors exited the Courtroom.)

* * *

VIRGINIA:
IN THE CIRCUIT COURT FOR THE
COUNTY OF CUMBERLAND

[Caption Omitted In Printing]

* * *

[19] MR. WOODSON: May it please the Court, Your Honor. Ladies and gentlemen of the Jury, I'm Bobby [20] Woodson, the Commonwealth Attorney of Cumberland County, and seated next to me is Mr. Warren Von Schuch from Chesterfield, who is helping to prosecute this case. Next to Mr. Von Schuch is Mr. Donald Ford and Ms. Lucretia Carrico, who are representing the defendant, Mr. Michael Williams, seated at the end of the table. We appreciate you serving on this Jury. We know you have to give up a lot, your jobs and other things that you are obligated to, but we really do appreciate your coming and serving and carrying out this most important duty.

We apologize for being late this morning. There were some things we had to get together, and we do apologize for starting late. This is a case that involves a couple in Cumberland County, a Morris C. Keller, Jr. and his wife, Mary Elizabeth Keller. They lived over in the Trent's Mill area. The case against Mr. Williams charges him with certain crimes he committed against Mr. and Mrs. Keller, those charges being on February 27th of this year, 1993, entering their house while armed with a deadly weapon, without their permission. It involves the robbery of Mr. and Mrs. Keller. It involves the rape of Mrs. Keller. It involves the kidnapping and abduction of Mr. and Mrs. Keller. It involves the capital murder of Mr. and Mrs. Keller. It involves arson of the house of Mr. and Mrs. Keller.

[21] We will go through and present evidence that we have gathered, to you. What we say today is not evidence. What I say today is not evidence. It's what I think the evidence will be once the Commonwealth finishes with its case of putting evidence on. The evidence you need to listen to is what will come from the stand, from the witnesses who will testify to you. I'm going to go through and tell you and indicate to you what we feel the evidence will show. Sometime after the holidays, after Christmas time, Jeffrey Cruse came to this area from the Stafford County/Fredericksburg area. He had met a member of the Lozano family in that area through employment and came down here to stay with them for a while in Cumberland and be employed down here.

Michael Williams was associated with the Lozano family and knew the Lozano family. He was living in Cumberland County prior to the holidays and during the holidays and Mr. Cruse did not come to Cumberland until after the holidays. Mr. Cruse, Jeffrey Cruse, and Michael Williams met through the Lozano family and became best of friends. You will hear testimony from the Lozano family that they had seen Michael Williams with a .357 Black Hawk Ruger pistol. You will hear testimony that they had seen Mr. Williams with that gun before Mr. Cruse came to Cumberland. You will also hear testimony that subsequent [22] to that they saw Mr. Cruse with the same pistol, that Mr. Williams had given the pistol at some point to Mr. Cruse to hold for him. On the night of February 27th, Mr. Williams and Mr. Cruse were at the home of the Lozano family, a home they were renting which is next to the Cumberland County Public Library,

just next to the Cumberland County High School just up Highway 60.

They were there. Albert Lozano was there; Verena James, who you will hear from; Michael Williams; Jeffrey Cruse, and some other people. Mr. Williams came up with the idea that he was going to rob a place. He and Mr. Cruse talked about that. Mr. Williams then offered Mr. Albert Lozano one thousand dollars if he would take him to a certain location. Mr. Lozano was drinking too much, knew it didn't sound right, knew that Mr. Williams didn't have the money, the one thousand dollars, and it just didn't sound right, and refused. Mr. Williams then approached Ms. Verena James, who is the sister to Mr. Lozano, and asked her, not anything about offering her any money or anything, but just asked her would she carry Michael Williams and Jeffrey Cruse to his home which is located down on Highway 45, going towards Cartersville.

She agreed to drive them down there and they did leave her house which she was living in, renting along [23] with her mother, about 8:30 that night on February 27. It was the three of them, Ms. James, Jeffrey Cruse and Michael Williams. They traveled down 60 and down 45, headed toward Cartersville, to where Michael Williams' mother was living, which the house is located just a little ways below a wood yard which was operated by one of the victims in this case, Morris C. Keller, Jr. They went to Mr. Williams' house. Mr. Williams went in the house; Ms. James stayed in the car; Mr. Cruse stayed in the car. Mr. Cruse made Ms. James swear to him that if he told her a secret that she would not tell anybody, especially not tell Mr. Williams. She did make that promise that she would

not disclose a secret and at that point he pulled out the .357 Black Hawk Ruger and showed it to her and said that "Michael Williams has given me this gun to hold for him. It belongs to Michael, but please don't tell him I showed it to you." She did that, she did not tell Mr. Williams, and then Mr. Williams returned to the car and they left the house.

Mr. Williams then directed her how to drive through some back roads, through some dirt roads, through the forest area, and they came out in a location just below the Bear Creek Market. If you know, it's down Route 622, close to the area where you go into Bear Creek Lake. At that point Mr. Williams said that they were going to his [24] cousin's house, or to a party, and that he didn't want her driving down the driveway to the house because his cousin didn't like people coming in there. So she let them out on the hard-surfaced road on Route 622. She left and came back to Cumberland. That was the end of it as far as she was concerned.

Mr. Williams and Mr. Cruse then proceeded to walk in the same way she drove toward Cumberland Courthouse to Bear Creek Market, the place which Mr. Williams had planned with Mr. Cruse to rob. When they got to Bear Creek Market, it was closing or had closed and they decided that it would not be a good idea to rob that place. The situation was just not correct. At that point, Mr. Williams said, "I know another place that would be easy to take. We'll go there." They then turned and proceeded to go north on Route 622, about a mile and a half, and they went past a house where Mr. Williams had previously lived with his mother and his stepfather. They passed that house and kept on for maybe a mile or three-

quarters of a mile and came up to the driveway of Mr. and Mrs. Keller.

The evidence will show you that the driveway of Mr. and Mrs. Keller leads a good ways off the road to their house and cannot be seen from the house. The evidence will show to you that whoever went to that house had to know that house was back off the road. And [25] remember, Mr. Cruse didn't come to this area – he didn't come until after the holidays. He didn't know Mr. and Mrs. Keller. He never had met Mr. and Mrs. Keller. He didn't know where they lived at, but Mr. Williams did. Mr. Cruse did not, but Mr. Williams had lived in Cumberland County at various intervals during his life, had been here, was out here before Christmas, had lived near Mr. Keller. At the time this happened he was living with his mother just a little ways below the wood yard that Mr. Keller ran. They went to that house and at that point Mr. Williams had gotten the .357 back from Mr. Cruse. He had the .357.

The evidence will show you that the .357 had only two bullets in it. At that point the plan was made that Mr. Cruse would go up and knock on the door and at the point Mr. Keller or Mrs. Keller came to the door, then they would go into the house. They did that. Mr. Cruse knocked on the door. Mr. Keller came to the door. At that point Mr. Cruse was at the door and Mr. Williams was right behind him with the .357 pistol. When Mr. Keller opened the door, Mr. Cruse opened the front door and he and Mr. Williams walked in. Mr. Williams then stuck the gun at Mr. Keller. At that point Mrs. Keller was in the kitchen. She came out of the kitchen area. Subsequent to that, Mr. Williams and Mr. Cruse directed Mr. and Mrs. Keller to go into the kitchen. At that point Mr. Williams

made Mr. Keller and [26] Mrs. Keller take all their clothes off, where they were nude, and made them sit on chairs in the kitchen area.

At that point the evidence will show you that Mr. Williams stood guard over them with the .357 while Mr. Cruse searched through the house to see what he could find to steal. Mr. Cruse did find a .38 pistol. He found several rifles and he found a shotgun. At some point those were loaded into a Jeep Cherokee which belonged to Mr. and Mrs. Keller. At some point in time Mr. and Mrs. Keller, while still nude, were put into a closet in the front living room while Mr. Williams and Mr. Cruse still looked through the house for what they could steal. You will find that some money was taken and some other items were taken. At a point in time after that Mrs. Keller was removed from the front closet and taken to a back closet, still nude, and Mr. Keller was left in the front closet.

Subsequently, it came to a point that Mr. Williams decided that they would rape Mrs. Keller. Mrs. Keller was taken into a back bedroom and was then raped by Mr. Williams. After Mr. Williams raped Mrs. Keller, then Mr. Cruse proceeded into the bedroom and then he raped Mrs. Keller. At that point in time you have to remember Mr. Cruse had the .38 pistol, which was fully loaded, and Mr. Williams had the .357 with two shots in it.

[27] At the time Mr. Williams had finished his attack on Mrs. Keller and left the bedroom, he switched guns with Mr. Cruse and he then had the fully loaded .38. Mr. Cruse had the .357 and Mr. Williams had the fully loaded .38. Then Mr. Cruse raped Mrs. Keller. After he finished

his attack on Mrs. Keller, then Mr. and Mrs. Keller were returned to the kitchen and they were both made to take a shower by Mr. Williams. He made both of them take a shower together. He made both of them put their clothes on when they finished the shower. Then they were returned to the kitchen area and Mr. Williams then told Mr. and Mrs. Keller that he was going to take them for a walk.

All during this time, Mrs. Keller had been begging Mr. Cruse and Mr. Williams not to hurt them, had been pleading with them not to hurt Mr. and Mrs. Keller. At that point in the kitchen, she pleaded again not to hurt them. Mr. Williams said, "We're not going to hurt you. We're just going to take you to the woods for a walk and lose you." At that point, just before they left the house, Mrs. Keller asked, "Can I take my marriage certificate? Can I have my marriage certificate to take with me?" She was allowed to get her marriage certificate in a frame and carry it with her. The evidence will then show you that Mr. and Mrs. Keller walked down a wood road, snow on the ground, approximately 11:30 at night, February 27th, walked [28] about three or four hundred yards down this road. When they got to that point, Mr. Williams directed them to turn and walk over into a thick area and away from the road, where there was thick underbrush.

At that point there was a discussion and it was decided that Mr. Williams would point his pistol – At this point Mr. Williams has the .38, which is fully loaded and which he had gotten in the house. After he finished his attack on Mrs. Keller, he'd gotten the .38 and left Mr. Cruse with the .357 with only two bullets in that. So at this point when they walk down the wooded road, Mr.

Williams has the .38, fully loaded. Mr. Cruse had the .357 with two bullets in that. There's some discussion that Mr. Cruse should only shoot the .357 one time and save one bullet. There's a discussion that Mr. Williams will point the .38 at Mr. Keller and Mr. Cruse will point the .357 at Mrs. Keller and they will shoot on the count of three. When the count of three was done, Mr. Williams shot Mr. Keller in the head and he fell to the ground. Mr. Cruse did not shoot.

Mr. Williams then turned to Mr. Cruse and said, "No witnesses," and then Mr. Cruse did shoot Mrs. Keller with the .357. The evidence will show you at that point that Mr. Cruse turned to leave the woods, Mr. Williams then proceeded to empty the .38 into [29] Mr. and Mrs. Keller to make sure there were no witnesses. At that point they then left the real underbrush area and walked out on the wooded road and at that point Mr. Williams handed the .38 to Mr. Cruse and asked him to reload it because Mr. Cruse was the one at the house who had found the .38 and had gotten some bullets and put in his pocket. He then gave the .38 back to Mr. Williams and reloaded. Mr. Cruse did that and he took the spent cartridges out, and it will be shown where he threw the cartridges to, and those cartridges have been discovered.

You will hear the experts who will come and tell you what they found in the lab work as far as the rape of Mrs. Keller, which corroborates Mr. Cruse. You will hear the ballistics experts come and tell you about what kind of gun the cartridges were fired out of. There was a bullet found on the ground there next to the bodies. There was a bullet found in the body bag of Mrs. Keller. There was a bullet found in the head of Mrs. Keller. There was a jacket

found which came off of the .357. There was a jacket found in the body of Mrs. Keller. The experts will tell you from the evidence it only shows that one shot was fired from that .357. The other bullet that was found in the body bag, the four cartridges that were found, spent cartridges that were found in the area of the crime scene, could not have been shot by the .357. It had to have been [30] shot by another gun other than the .357.

Also, I would point out that the testimony will show that only two bullets were in the .357 when they went to the house that night. At that point Mr. Cruse and Mr. Williams returned to the house of Mr. and Mrs. Keller and proceeded to set the house on fire. First, they loaded some other items into the Jeep; a microwave, color T.V., stereo, speakers. They loaded those items into the Jeep, set the house on fire and then drove to the Fredericksburg area. They arrived in the Fredericksburg area the next morning. You will hear from witnesses who will identify Mr. Williams and Mr. Cruse as being in the Stafford County area on the morning of February 28th and the afternoon of February 28th, selling property, and that property will be identified as property which came from Mr. and Mrs. Keller. You will also hear from officers in the Fredericksburg area that they discovered the Jeep that belonged to Mr. and Mrs. Keller, which had been burned on the Rappahannock River. You will also hear from the bus driver who drove Mr. Williams and Mr. Cruse back to Richmond, and he can identify them as riding on his bus, coming back to Richmond.

You will hear evidence that Mr. Michael Williams had called his brother, Johnny Williams, to come and pick him up in Richmond and that Mr. Johnny Williams [31] did

pick him up in Richmond. You will hear evidence that .38 has not been located. It has not turned up. The .357 was found in the Rappahannock River. Mr. Cruse showed the law enforcement where that pistol was thrown into the river. You will hear that Michael Williams threw the pistol into the river. That pistol has been located and will be here to present to you. I would also point out to you that the experts from the lab will tell you that when the pistol was found in the river, there was only one .357 bullet in it. It had been reloaded with some .38s, but it was one .357 jacketed bullet left in there.

We believe that after you hear all of this evidence that the Commonwealth will put on, that you will return verdicts against Mr. Williams, guilty convictions on all of these charges. We ask you again to listen to the evidence very carefully coming from the witness stand. What I'm saying is not evidence. It's what we think the evidence will show to you. Again, I appreciate the attention you will give to this matter and really appreciate the duty you are doing in coming to serve today. Thank you.

MR. FORD: Judge, may I relocate myself up here somewhere?

THE COURT: Yes, sir.

MR. FORD: Thank you. I'm a little [32] disadvantaged. I finally discovered Cumberland's – This is the first time I've tried a case up here and being in the middle of a counsel table makes it tough back and forth. My name is Don Ford and, along with Lucretia Carrico, I am privileged, I would say, to represent Michael Williams. I think it's a privilege for any defense attorney to take on a case of this magnitude. When we talked to you

before in voir dire, we made some efforts to educate you as to what this case was going to be about. We mentioned, of course, murder, rape, robbery, and it wasn't going to be a pretty sight. And, obviously, any kind of case of this magnitude, it's not going to be. You're going to have graphic photos and you're going to have graphic testimony.

What we are asking you to do is to follow what the Judge has already told you in voir dire and what he will tell you again. The burden is always on the Commonwealth to prove its case beyond a reasonable doubt. We are simply asking you to keep that in mind, that the defendant is presumed to be innocent until you have found that the Commonwealth has proven each and every element of each and every charge beyond a reasonable doubt. So I don't want you to sit up here and listen to this wave of evidence, because the Commonwealth, quite frankly, has forty or fifty witnesses who are going to come up here as [33] in a parade and prove to you, or attempt to prove to you, certain things. So it's going to look like a lot of quantity versus not much quantity on our side, but I will tell you that quantity doesn't make the case, quality does.

So I would ask you to keep an open mind through the entire proceedings and don't just shut down after the Commonwealth puts its case on. But essentially what we're going to think and we want to kind of direct your attention to, we think the important part of this case is going to be who pulled the trigger, who is the trigger man, because in a capital murder case the trigger man is the one that is guilty of capital murder. We will show to you, we believe, the evidence will be in conflict as to who

was the actual trigger man out there in those woods on February 27th.

We will not dispute that Michael Wayne Williams was not there. I think that would test your credibility or my credibility, obviously. But I think that you need to be sure and listen and pay particular attention to the evidence as it relates to what happened in the woods after the majority of this stuff had already gone on. It's not pretty. We can't make excuses for a lot of what happened, but I think you as jurors have sworn to uphold the law and to follow the Judge's instructions, and I know you will. And, again, I want to make sure that I echo [34] Mr. Woodson's sentiments that I appreciate your coming out here. It's going to be a day or two longer to try this case. I know you'll sit attentively and listen to everything and I thank you for your time.

* * *

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF CUMBERLAND

COMMONWEALTH OF VIRGINIA

v.

MICHAEL WAYNE WILLIAMS

THE HONORABLE JOHN R. SNODDY, JR., PRESIDING

TRIAL – DAY TWO

Cumberland, Virginia
January 4, 1994

* * *

[82] The witness, OFFICER CLAUDE MEINHARD, having first been duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

BY MR. VON SCHUCH:

Q Could you give the ladies and gentlemen of the Jury your name, please?

A Claude Meinhard, Deputy Sheriff, Cumberland Sheriff's Department.

Q Officer Meinhard, were you so employed on February 28th of 1993?

A Yes, I was.

Q On that date did you have occasion to respond to the residence of a Morris and Mary Elizabeth Keller?

A I did.

[83] Q Can you indicate to the ladies and gentlemen what you had occasion to see and do there, please?

A Yes. At approximately 9:45 a.m. on that date I received a call from the dispatcher to go to the Keller residence on Route 617 in Cumberland County. When I arrived there, the house was completely burned. The fire department was on the scene.

Q Could you keep your voice up so the ladies and gentlemen can hear you?

A An investigation revealed that both Mr. and Mrs. Keller were missing, along with a 1987 Jeep Cherokee bearing license number MEW-BOP.

Q Did you have occasion to make a missing persons' report as a result of that discovery?

A Yes, I did.

Q What about the Jeep; what notification was given insofar as being on the lookout for that type of a vehicle?

A There was a B.O.L. sent out for Mr. and Mrs. –

Q When you say a "B.O.L.", that's a what?

A That's "be on lookout" for Mr. and Mrs. Keller and for the vehicle bearing that license number.

Q Calling your attention then to March 1st, [84] did you have occasion to receive a phone call from a young lady by the name of Jean Ownby?

A Yes, I did.

Q As a result of that, what did you do?

A As a result of that, I talked with one of her employees.

Q And who was that?

A Verena James.

Q After you received that information from Ms. James, what did you do?

A After I received the information, I got with Special Agent Tyree and we went to interview Mr. Cruse at the Lozano residence.

Q Now, you said Officer Tyree was with you; is that correct?

A Yes.

Q At that time did you have occasion or did Officer Tyree, in your presence, have occasion to recover any property?

A We did. Mr. Cruse agreed to come to the Sheriff's Office with us for the interview. We interviewed him there. When he came out of the house, he had on a pair of cowboy-type boots and we asked him for permission to have the boots to compare with some foot impressions, and he gave us the boots.

[85] Q After the interview that you had with Mr. Cruse, what was done with him?

A Later the same night or same day –

Q He came down here and talked to you, is that correct?

A Yes.

Q You didn't learn much, I guess?

A No; we didn't.

Q He was released?

A He was released.

Q Sometime later on that evening, did you have occasion to receive another phone call?

A I did.

Q And who was that from; Ms. Ownby?

A It was from Ms. Ownby.

Q After receiving that information from Ms. Ownby, what did you do?

A I talked with Mr. Woodson and in the end we obtained a warrant for Mr. Cruse for possession of a firearm.

Q Did you have any basis or any evidence whatsoever to arrest Mr. Cruse at that time for anything that had happened at the Keller residence?

A No.

Q Was Mr. Cruse incarcerated as a result of [86] that arrest?

A Yes, he was.

Q Now, Officer Meinhard, calling your attention to March 15th, did you have occasion to respond to – Where was Michael Williams at that time, on March 15th?

A Mr. Williams was in Piedmont Regional Jail.

Q Did you have occasion to respond there?

A Yes.

Q And what was your purpose in going there?

A Agent Tyree and myself had drafted affidavits for search warrants for a PERK kit and we picked Mr. Cruse up after serving a copy on him at the regional jail. We took him to the hospital where we obtained approximately twenty-five head hairs, twenty-five pubic hairs –

Q Would you speak up, sir?

A – approximately twenty-five head hairs, twenty-five pubic hairs, two vials of blood and two saliva swabs from the mouth and two from the lips.

Q When you say PERK kits, what does PERK stand for? I don't think the ladies and gentlemen of the Jury understand that. Do you want me to tell you?

A Yes.

Q Physical Evidence Recovery Kit.

[87] A That's it.

Q And, essentially, what was the purpose in your getting that material?

A It was to compare with what was left at the scene or with the victims.

Q Recovering all those items from both Mr. Cruse and Mr. Williams, what did you do with those items that you recovered from them?

A The nurse initialled them at the hospital and turned them over to me. I took them and put them in the back of Agent Tyree's trunk and locked them up until we got back to the office where they were put in the evidence room in a refrigerator and evidence tape was put around the refrigerator door. He and I both initialled it.

Q Where were they taken from there?

A On the 17th of March they were taken out of the refrigerator and put back in the trunk of his car and we took them to the lab in Richmond.

Q This material here, I'm going to ask you if you can identify this, please.

A Yes.

Q What's involved in that?

A That is the Physical Evidence Recovery Kit of Michael Wayne Williams.

MR. VON SCRUCH: Judge, I would offer that [88] at this time as *Commonwealth's Exhibit Number Two.*

THE COURT: Now, this is your Exhibit Number Two, not for identification?

MR. VON SCHUCH: Right; yes, sir.

BY MR. VON SCHUCH: (Continuing)

A I'm going to show you this, Officer Meinhard, and ask you if you can identify that.

A Yes. This is the one on Jeffrey Alan Cruse.

MR. VON SCHUCH: Judge, I would offer that at this time as *Commonwealth's Exhibit Number Three.*

THE COURT: So entered.

BY MR. VON SCHUCH: (Continuing)

Q Mr. Meinhard, at the time that you locked Mr. Cruse up Monday night on a misdemeanor, I presume, weapons charge –

A Yes.

Q – was there any evidence that you were aware of that linked him to the Kellers that you could have charged him or obtained warrants for anything that occurred at the Keller residence?

A Not at that time, no.

[89] Q Did Mr. Cruse have occasion to talk to you and Officer Tyree after he was locked up on that weapons charge?

A He talked to Officer Tyree.

Q Were you present during that or not?

A No, I wasn't.

MR. VON SCHUCH: Would you answer any question, that Mr. Ford has, please?

THE WITNESS: Yes, sir.

MR. FORD: No questions for Deputy Meinhard.

* * *

VIRGINIA:

IN THE CIRCUIT COURT FOR
THE COUNTY OF CUMBERLAND

[Caption Omitted In Printing]

* * *

[120] The witness, JEFFREY ALAN CRUSE, having first been duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

BY MR. VON SCHUCH:

Q Mr. Cruse, can you speak up, please, so that everybody on the Jury can hear you, and give them your full name, please?

A Jeffrey Alan Cruse.

Q Speak up; talk to me.

A Jeffrey Alan Cruse.

Q Mr. Cruse, where are you from originally?

A Originally, Indiana.

Q Where had you been living prior to the time you came to Cumberland County?

A At the Lozanos.

Q I mean prior.

A Oh, prior?

Q Before you came to Cumberland, where were you living?

A Fairfax.

Q Was there a reason why you came to Cumberland?

A For work.

[121] Q Can you tell us how it was that you managed to come down here to work?

A Like –

Q In other words, who did you know and how were arrangements made? Why did you come down here to find a job?

A I knew the Lozanos and he got me a job where he was working.

Q Where was that?

A With Donald Short.

Q Do you remember when it was, approximately when it was that you first came to Cumberland County to stay?

A Between the 8th and probably the 11th, or something like that.

Q Of when?

A January.

Q Of 1993?

A Yeah.

Q Had you ever lived in Cumberland County before that?

A No.

Q I'm not asking for a specific time. Do you remember approximately when it was when you first met the defendant, Michael Williams?

[122] A Maybe in the middle of January sometime.

Q Can you indicate the relationship that you established with him at that time?

A Just like drinking buddies.

Q Now, I'm going to show you an item – if the Court would let the Sheriff show him Commonwealth's Exhibit Number One, please. Mr. Cruse, before the evening of February 27th,had you ever seen that weapon?

A Yes, I had.

Q And where did you first see it?

A I think in Albert Lozano's car.

Q Whose weapon was that?

A It was Michael Williams'.

Q On the evening of the 27th, did you have occasion to have possession of that weapon?

A Yes.

Can you tell the ladies and gentlemen of the Jury what you and Michael Williams were doing on the evening of the 27th before you left the house?

A We was at the bar drinking.

Q Do you remember what bar that was?

A I can't remember the name of it.

Q Where did you go when you left the bar?

A To the Lozanos.

Q What did you do at the Lozanos?

[123] A Just like stayed there a little while and then tried to find a ride.

Q What, if anything, were you and Michael Williams going to do?

A Go rob a store.

Q You were going to go rob a store?

A (Witness indicates affirmatively.)

Q Did you have occasion to discuss that with Michael Williams?

A Not really.

Q Well, how did that plan come in to being; who thought of it?

A Mike.

What was said?

A Mike just asked me if I wanted to rob a store.

Q Did you have any idea what store you all were going to rob?

A No, I didn't.

Q Did you have any idea how you all were going to get there?

A No, I didn't, not at the time.

Q Do you know Verena James?

A Yes, I do.

Q Did you and Michael leave with her that [124] night?

A Yes, we did.

Q Can you tell the ladies and gentlemen of the Jury, did you have that weapon with you when you left, the .357?

A Yes, I did.

Q Your answer would be yes?

A Yeah.

Q At that time, did Michael Williams have a weapon with him?

A No, he didn't.

Q Do you know where Verena James dropped you off, you and Michael Williams?

A Some road right up before the store.

Q What happened after you got out of the car?

A We like walked through the woods towards the store.

Q When you got to the store, did you rob the store?

A No, we didn't.

Q Why didn't you and Michael Williams rob the store?

A It was like closing at the tine or something like that.

Q What did Michael Williams say at that time?

[125] A That he knew a house where we can go; they'd have a couple thousand dollars.

Q Had you ever met or did you know Morris or Mary Elizabeth Keller before this evening?

A No, I hadn't.

Q Did you know where they lived?

A No, I did not.

Q Had you ever been to their house before under any circumstances that you can recall?

A No, I had not.

Q Now, do you know approximately – This was after dark, I presume; is that correct?

A Yeah.

Q Who took you to the Kellers?

A We walked.

Q Who led you as you walked?

A We was just walking together.

Q Who knew where they were going?

A Mike did.

Q Now, can you tell the ladies and gentlemen of the Jury what happened when you got to the – Well, let me

ask you this. When you were in the vehicle with Verena James, at some point in time did you go to Mike's house first before she dropped you out at the store?

A Yes, we did.

[126] Q Did you have the weapon at that point?

A Yes, I did.

Q What did you do with the weapon when you were in the vehicle with her?

A I just had it in my pants, in the front.

Do you recall whether or not you showed her that weapon?

A Yes, I did.

Q Why would you do that?

A I don't know.

Q Prior to the time you went in, what happened outside the Keller residence prior to you going in?

A We looked at the house for a little while and Mike had the gun at that point.

Q I need to hear you. I can't hear you.

A We just like stayed on the other side of the Jeep and like looked at the house for a while.

Q Did you all have any conversation?

A I can't remember.

Q How did you get into the house?

A Walked in.

Q Did you have the weapon at this time?

A No, I did not.

Q Where was the weapon?

A Mike had it.

[127] Q How did Mike get the weapon?

A I handed it to him, I think, right by the Jeep.

Q What was the plan to get into the Keller residence?

A I was supposed to knock on the door and then I just walked in.

Q You were supposed to – You were going to knock on the door and then what was going to happen? You all were just going to go in?

A I don't really know. That's what I did. Once he answered the door, I just walked in.

Q Who answered the door?

A Mr. Keller.

Q Were you the first one in the house?

A Yes, I was.

Q What did you say to Mr. Keller when you knocked on the door?

A Nothing. I just walked in.

Q You knocked on the door and he opened the door and you walked in?

A Yes.

Q Where was Michael Williams?

A Behind me.

Q Did he enter the house behind you?

[128] A Yes, he did.

Q Did you see what he did when he entered the house?

A He said he had the gun pointing at him.

Q He had the gun pointed at Mr. Keller?

A Yeah, at his head.

Q Did Mr. Keller say anything to you at this time?

A I don't think so.

Q When you went into the house, as you and Mr. Williams entered the house, could you see or did you see Mrs. Keller?

A Yes.

Q Where was she?

A She was in the kitchen.

Q Now what happened when you and Michael Williams, with the .357, got in the house; what was the next thing that you two did?

A We had them go in the kitchen and then I looked in her purse for money.

Q You looked in Mrs. Keller's purse. Did you find any money?

A Six dollars.

Q What did you do with it?

A Put it in my pocket.

[129] Q What was Michael Williams doing during the time you were looking around the house?

A He was standing there with the Kellers.

Q Did he still have the .357?

A Yes, he did.

Q Could you hear any conversation between the defendant and the Kellers?

A I don't remember.

Q What were you doing while he was in the kitchen with the Kellers and the gun?

A I was looking through the rest of the house.

Q Can you indicate what you found?

A I found some like fake jewelry and some shells in the bedroom.

Q In the bedroom?

A Yes.

Q What did you do with the jewelry that you found in the bedroom?

A I stuck it in my coat pocket.

Q You said you found some shells?

A Yes.

Q What do you mean by that?

A Some shells for a .38.

Q What did you do with them?

A I put them in my coat pocket.

[130] Q Do you remember how many there were?

A Not really.

Q What did you do after you found the shells for the .38?

A I just like told them I found some shells and I asked them where the gun was.

Q What happened at that point?

A I heard Mr. Keller say it was up on top of the dresser.

Q Did you go back to the dresser?

A I was still in the bedroom.

Q What did you do?

A I looked up on top of the dresser and it was laying up on top.

Q You found the .38?

A Yeah.

Q Now, did you continue after you found the .38 to look around the house for other property?

A Yes, I did.

Q Can you indicate what you found, what were some of the other things you noticed or found and what you did?

A Not really. I looked like in the back living room. It wasn't nothing in there. Other than that, it was just like a T.V. and stuff out in the front room.

[131] Q I need you to speak up. The whole time you were looking around the house and finding these items, where was Michael Williams and where were the Kellers?

A In the kitchen.

Q Now, did there ever come a point in time where Mr. Keller and Mrs. Keller were moved from the kitchen?

A Later on.

Q Was there a point in time as you were looking around that Michael Williams came out of the kitchen?

A After they was in the closet.

Q Well, maybe you can tell me, because where we've left you, as I understand, is that you were looking around the house for things to steal and Michael Williams was in the kitchen with them?

A Yeah.

Q Now you've indicated that they were in the closet?

A Yeah, when I went back to the kitchen.

Q Tell us how that happened.

A I just went back to the kitchen and Mike said, "We're going to tie them up." So I grabbed like a phone cord and tied them up with that.

Q Were the Kellers placed at that point?

[132] A In a closet inside the living room, the front living room.

Q Now, what was the next thing that you and Michael Williams did in that house?

A We looked through it.

Q What were you doing, what were you looking for, what did you take?

A Like money; we was looking for money.

Q Did you find any additional money?

A Not just some change later on.

Q Did you see whether or not Michael Williams found any money?

A No, I did not.

Q Where were some of the other things that you saw and what did you do when you were looking around?

A Just like looking around and Mike found a leather jacket inside the closet.

Q He found a leather jacket inside the closet, Mr. Keller's jacket?

A I don't know whose jacket.

Q What did he do when he found the jacket?

A Put it on.

Q Was he wearing any kind of jacket or anything when he went to the house?

A Like a jean jacket.

[133] Q What did he do with that when he put on the jacket he found in the closet?

A I'm not sure. I think he laid it down somewhere.

Q Did you ever see that jacket again?

A When I threw it out of the Jeep.

Q You threw it out of the Jeep?

A Yeah.

Q Why did you do that?

A Mike just said throw it out.

Q Michael said throw it out?

A Yeah.

Q I'm going to ask you if you can identify that; do you recognize that?

A I believe I do.

Q Can you speak up and tell us –

A I believe I do.

Q – is that the jacket that he was wearing –

A I think so.

Q – that was found in the closet by Michael Williams?

A Yeah.

MR. VON SCHUCH: Judge, at this time I would offer that as Commonwealth's Exhibit, I believe – No, I don't believe because I think I've lost [134] track.

THE COURT: *Commonwealth's Eleven.*

MR. VON SCHUCH: Yes, sir.

BY MR. VON SCHUCH: (Continuing)

Q At this point, after Michael Williams took the jacket out of the closet and put it on, what was the next thing that you two did in the house?

A I think just looked around some more.

Q Just continued to look around?

A (Witness indicates affirmatively.)

Q Were you collecting any property at this time?

A I wasn't, I don't think.

Q You don't think so. Was anything taken out of the house at this time and put in the Jeep outside or anything like that?

A I think just like a little bit later we put like the smaller stuff in it.

Q When you refer to smaller stuff, what type of things are you referring to?

A Like the rifles and stuff we found in the closet.

Q I'm going to show you two rifles that officer Tyree has shown the Jury. Do you recognize those?

[135] A Yes, I do.

Q Where were they found; where did you find them?

A Inside the closet.

Q And what was done with them at that time?

A I laid them up on the couch.

Q You laid them on the couch?

A Yeah.

Q Was there a reason at that time, when you were looking around, that you opened that particular closet?

A That's just where Mike said to put them after we tied them up.

Were there any other items at this time that you took out to the Jeep outside?

A Just like rifles and a shotgun and like an old level.

Q An old level?

A Yeah.

Q When you say shotgun, I'll show you this. Indicate whether or not you recognize that.

A Yes, I do.

Q Does that appear to be the shotgun?

A Yes.

Q And this was also placed in the Jeep, as I [136] understand you, at this time?

A (Witness indicates affirmatively.)

THE COURT: It's *Commonwealth's Exhibit Twelve.*

BY MR. VON SCHUCH: (Continuing)

Q Now, at this time after these things were loaded in the Jeep, what happened then in the house?

A I'm not really sure.

Q I need you to speak up.

A I'm not really sure.

Q Well, where were the Kellers?

A I think they were still in the closet.

Q Was there a point in time when they were moved? When you were in the house gathering up property and moving it to the Jeep, were the moved from that closet at any time?

A Yes, she was.

Q Where was Mrs. Keller moved to?

A To the back bedroom.

Q Why was she moved back there?

A I didn't know at that time.

Q Who moved her to the back bedroom?

A I think I did.

Q You did?

[137] A Yeah.

Q Did you have the .38?

A Yes, I did.

Q Why did you move her to the back bedroom?

A I'm not really sure.

Q Where did you put her in the back bedroom?

A In the closet.

Q So they were separated?

A Yeah.

Q After Mrs. Keller was put in the closet, what did you and Michael Williams do?

A I forget.

Q Did you find any other property?

A Just like the T.V. and stuff like that in the living room.

Q At this time was that stuff removed to the Jeep or was that left in the house?

A That was later on.

Q It was removed later on?

A Yes.

Q Was it moved in the house? Did you move it from where it was to a different location or did you leave it where it was? Was any other property –

A I think we left it where it was.

You left it where it was, all right. Now, [138] did there come a point in time or can you tell us what happened with Mrs. Keller?

A We had intercourse with her.

Q Well, if you can speak up to me. Did Michael Williams say anything to you about intercourse with Mrs. Keller?

A He asked me if I wanted to have sex with her.

Q He asked you if you wanted to have sex with her. What did you say?

A "I don't know. I guess."

Q Well, I want to know what you said.

A That's what I said.

Q You don't know?

A I said, "I don't know. I guess."

Q What did Michael –

THE COURT: He said, "I don't know. I guess."

BY MR. VON SCHUCH: (Continuing)

Q "I don't know. I guess." I'm sorry. What did Michael Williams do at that point or say?

A I don't remember.

Q Was Mrs. Keller moved from the closet?

A Yes, she was.

[139] Q Who moved her from the closet?

A I untied her.

Q You untied her?

A Right.

Q Where was she taken when she was untied?

A She, like, went over to the bed.

Q She went over to the bed? Were you in the room with her?

A I think I was like right by the doorway at that time.

Q After you untied her, did someone move her to the bed?

A No. She walked over there.

Q She walked over. Why did she walk to the bed?

A I forget why. I don't know.

Q Was she clothed or unclothed at this time?

A She was still unclothed.

Q You said she was still unclothed. At what point in time were her clothes removed?

A Like sometime in the kitchen right after we went in.

Q Who was it that told them to take their clothes off?

A Mike did.

[140] Q Mike did?

A (Witness indicates affirmatively.)

Q So that at the time they were put into the closets, they were both unclothed, both of them?

A Yes, sir.

Q When she moved to the bed, what happened?

A Mike had sex with her.

Q Mike had sex with her? What was Mrs. Keller saying at this time; could you hear?

A I don't remember.

Q What weapon did Mike have with him?

A He had the .357 with him at that time.

Q You were at the door; is that correct?

A Yeah.

Q What did you see Michael Williams do to Mrs. Keller?

A He started having sex with her and I just walked out.

Q When you say having sex, what do you mean?

A He stuck his penis in her vagina.

Q Did you watch him have sex with her after that; did you watch him have –

A No. I walked out into the living room.

Q Do you know how long Michael Williams was in the bedroom with her?

[141] A No, I don't.

Q Did you hear any conversation between them?

A I don't think so.

Q What happened at that point? Did you go back in the bedroom?

A A little bit later I did.

Q Was Michael Williams still in the bedroom with her?

A He was like walking out as I was walking in.

Q What happened as you walked back into the bedroom and Michael Williams walked out?

A He asked for the .38.

Q Did you give it to him?

A Yes, I did.

Q Did you know why he asked for the .38?

A No.

Q Did he tell you why he wanted the .38?

A No, he didn't.

Q Was the .38 loaded?

A It was fully loaded.

Q Fully loaded. How many bullets were in the .357?

A Two.

Q When you gave him the .38, what did he do with the .357?

[142] A Handed it to me.

Q He handed it to you? You then went in the bedroom with the .357; is that correct?

A Yes.

Q And what did you do to Mrs. Keller at that time?

A I had intercourse with her.

Q When you say you had intercourse –

A I stuck my penis in her vagina.

Q What was Mrs. Keller saying to you at that time?

A "Just don't hurt us."

MR. FORD: Objection, Judge. I don't see what that relevance – I think it's hearsay, number one, what Mrs. Keller had to say to this man right here, and I don't think it falls under any exceptions to hearsay rule.

MR. VON SCHUCH: Well, I think it does, Judge. I think if Mrs. Keller is pleading with him not to have sex with her that certainly the burden is on the Commonwealth that it was non-consentual sex. The fact that she is pleading with him –

THE COURT: I mean, I think that is admissible for that reason.

[143] BY MR. VON SCHUCH: (Continuing)

Q Mrs. Keller was pleading what, "Don't hurt us"?

A "Just don't hurt us."

Q When you got done having sex with Mrs. Keller, what did you do at that point?

A I'm not sure. I think we tied them back up and walked them into the living room, tied her back up or something.

Q Were they clothed at that time?

A No, they wasn't.

Q Did you and Michael Williams do anything else while they were in the living room, tied up?

A I don't think so.

Q Where was the next place you moved them to?

A Into the shower.

Q And whose idea was it to do that?

A Mike's.

Q What did he tell them to do?

A He just told them to take a shower.

Q Both Mr. and Mrs. Keller?

A Yes.

Q Did you know why he was doing that? Did he tell you why he was doing that?

A No.

[144] Q After they took a shower, what did he tell them to do?

A Put on clean clothes.

Q Did they do that?

A Yes, they did.

Q At the time they were dressed after the shower, where were they in the house? Where did you take them in the house?

A Back into the kitchen.

Q What happened when you got back in the kitchen?

A I can't remember.

Q At this time did you still have the .357?

A Yes, I did.

Q Did Michael Williams still have the .38?

A Yes, he did.

Q Were they at any time removed from the house?

A Yes, they was.

Q How did that happen?

A Mike said, "We're going to take a walk."

Q Mike said, "We're going to take a walk"? Where were the Kellers taken?

A Back on a dirt road and into a thicket.

Q When they left the house, who was the first [145] one out of the door?

A The Kellers. I can't remember exactly which one.

Q Did Mrs. Keller ask to take anything before she was led out of the house?

A She asked for her marriage license.

Q She asked to receive her marriage license?

A (witness indicates affirmatively.)

Q Was she permitted to get that?

A Yes, she was.

Q Where did she go to get her marriage license?

A I think it was by the door on a table right there, like a dresser or something, some kind of little thing.

Q What were the Kellers saying and doing at this point?

A I can't remember. I don't think nothing.

Q You don't think they were saying anything?

A No.

Q When Michael Williams told them, "Let's take a walk," did they say anything to that?

MR. FORD: Judge, again, I don't know what – again, a hearsay objection as to what the Kellers may or may not have said during this [146] period of time. I don't think it falls, again, under any hearsay exceptions. What they tell him is clearly a hearsay situation.

THE COURT: It depends on what they're telling. It depends on –

MR. VON SCHUCH: This is a part of the crime. This is a part of the res gestae. These aren't hearsay admissions to prove the truth of this. This is what they were saying and that's what I'm trying to establish, is what their condition was.

MR. FORD: What they said doesn't prove murder. It doesn't prove –

MR. VON SCHUCH: Well, it proves abduction, which – They didn't willfully accompany them.

THE COURT: Whether they were willfully accompanying somebody or whether they were being forced.

MR. FORD: Well, I think his evidence is that they were going out by gunpoint. I think that's enough. What they say, in my view, is irrelevant and hearsay, clearly, and probably prejudicial and inflammatory, depending on what they say.

MR. VON SCHUCH: Judge, I'll just withdraw [147] the question.

THE COURT: Withdraw the question? If he's withdrawing the question –

MR. FORD: I understand, Judge.

BY MR. VON SCHUCH: (Continuing)

Q Mr. Cruse, you indicated that the Kellers were the first to leave the house; is that correct?

A Yes, they was.

Q And Mrs. Keller was leaving, as I understand your testimony, with her marriage license in her hand?

A Yes.

Q Where were they taken?

A Down a dirt road and into a thicket.

Q Do you know how far they were from the house?

A Not really.

Q They were the first ones out the door; is that correct?

A Correct.

Q Who was the first one to walk down the dirt road?

A The Kellers was.

Q Where was Michael Williams?

A Behind the Kellers.

[148] Q Did he still have the .38?

A Yes, he did.

Q And where were you?

A I was behind Mike about, you know, quite a ways behind.

Q Did you still have the .357?

A Yes, I did.

Q When they got back into the woods, who was the first to enter the wooded area off the dirt road?

A The Kellers.

Q Do you recall whether Mrs. Keller or Mr. Keller were the first ones to try and get through that wooded area?

A No. I don't know which one went first. It was the Kellers though.

Q Was there a point in location where they stopped in the woods?

A Yes, on back a little ways.

Q Now, did you enter the wood thicket with your .357?

A Yes, I did.

Q Did Michael Williams enter it with his .38?

A Yes, he did.

Q As you were in the woods, where was Michael Williams standing in relationship to you?

[149] A To my left.

Q So if I'm you, Michael Williams was over here; is that correct?

A Yes.

Q 'Now, where was Mrs. Keller at this time?

A Directly in front of me.

Q So if I'm you then Mr. Woodson here would be the direction or the location of Mrs. Keller; is that correct?

A Correct.

Q Was she this close to you or was she farther away?

A She was further.

Q Can you give us some idea, if I'm you, where you believe she was standing in terms of, perhaps, something; Mr. Woodson, this table, the end of the table, or whatever?

A Maybe around this end of the table somewhere.

Q At the other end of the table?

A Somewhere in there.

MR. VON SCHUCH: Let the record reflect five or six feet.

MR. FORD: That's fine.

[150] BY MR. VON SCHUCH: (Continuing)

Q Now, Mr. Williams was on your left; is that correct?

A Correct.

Q Where was Mr. Keller?

A Directly in front of him.

Q Was he the same distance from Mr. Williams that you were from Mrs. Keller?

A Yes, he was.

Q And would that place him somewhere – and I'm pointing to an area in front of a file here on the table; is that correct?

A Yeah.

Q What was the plan at this point?

A I still didn't know at that point.

Q You didn't know at that point. What discussions did you and Michael Williams have?

A I really don't remember exactly.

Q Did there come a point in time when you raised the .357 towards Mrs. Keller?

A Yes, there was.

Q And is there a reason why you did that?

A Mike said, "We'll shoot at the count of three."

Q So Michael Williams said, "We're both going [151] to shoot at the count of three"?

A Yes, he did.

Q Did you agree to that?

A I didn't think he was going to do it.

Q Who fired their weapon first?

A Mike did, but it was after that.

Q Michael Williams fired his weapon and who did he shoot?

A He shot Mr. Keller.

Q What happened to Mr. Keller?

A He fell down.

Q When he shot Mr. Keller, what did you do?

A I just like looked at him.

Q And then what did you do?

A Then he told me to shoot, that he didn't want to leave no witnesses.

Q And what did you do?

A I shot.

Q You shot Mrs. Keller?

A (Witness indicates affirmatively.)

Q What happened to Mrs. Keller?

A She fell down.

Q Now, did Mr. Keller stay on the ground at this point?

A No. He stood back up.

[152] Q And what happened when he stood back up?

A Mike like jerked back just a little bit and shot him again.

Q He jerked back?

A Like surprised.

Q If he was standing here next to you at this time when he jerked back, were you somewhat in front of him?

A No. It was just like maybe an inch or so.

Q It was just an inch or so?

A You know, just like jerked.

Q When he jerked back, what did he do at that time?

A He shot him again.

Q And what did Mr. Keller do at that time?

A He fell down.

Q Now, you had how many bullets in the .357 at this time?

A Two.

Q After you shot Mrs. Keller, how many did you have?

A One after that.

Q Did you shoot that one bullet?

A No, I did not.

Q Why didn't you shoot that one bullet?

[153] A Because Mike said if anything happened, just shoot one time. He didn't want to shoot both bullets.

Q If anything happened, just shoot one time. Why did he want one bullet left in the .357?

A I don't know.

Q When did he tell you that?

A I forget when. I remember him telling me, but I don't remember exactly when.

Q Well, was it before you went into the house, was it after you left the house, was it when you were in the woods?

A I think it might've been like over by the store.

Q Over by the store when you only had one gun?

A Yeah.

Q He only wanted you to shoot once?

A (Witness indicates affirmatively.)

Q Had you all planned to shoot someone in the store?

A Not really, no.

Q After Mr. Keller was shot the second time by Michael Williams, what did you do?

A I just looked at them.

Q You just looked at Mr. and Mrs. Keller and they were both on the ground?

[154] A Yes, they was.

Q What was the next thing that happened?

A I was starting to walk off and Mike said, "Wait." He said, "What if they ain't dead?" I said, "I don't know."

Q You started to walk off? If Michael Williams is standing here and I'm you, where am I?

A Oh, okay, it's way back there.

Q This is Michael Williams here.

A Okay.

Q Are you behind him; are you off to this side of him?

A I'm behind him.

Q I'm sorry?

A I'm like walking back up through the thicket we come in.

Q You're walking back up through the thicket. How far were you from Michael Williams when he made the statement to you, "What if they're not dead?"

A About four foot.

Q About four feet. So you were out here somewhere?

A Yeah. It wasn't too far from him.

Q What did you say when Michael Williams said, "What if they aren't dead?"

[155] A I said, "I don't know."

Q What did Michael Williams do at that point?

A He shot them again.

Q He shot them both again? Do you know how many times he shot them?

A I think like a couple more times apiece or something like that.

Q Did you fire that .357 again?

A No, I did not.

Q Did you see him shoot Mrs. Keller with the .38?

A His back was like towards me, but you could tell by the way he was leaning that he was like leaning towards her.

Q So if he shot her, she would be shot with both the .38 and the .357?

A Yeah.

Q Mr. Keller was never shot with the .357?

A Not he was not.

Q What happened when you and Michael Williams got out to the road?

A He handed me the .38 to reload and I handed him the –

Q Why did he give you the .38 at that time?

A To reload it.

[156] Q You had the shells?

A Yes. I had them in my pocket from where I took –

Q Did you reload the .38 at that time?

A Yes, I did.

Q What did you do with the shells that you took out of there?

A I just like put them in my left hand and flung them off to the left.

Q Off the road?

A Yeah, directly like across from where we come out of the thicket.

Q Did you give the .38 back to Michael Williams?

A No. I handed him the .357 while I reloaded.

Q Did he thereafter keep the .357 and you keep the .38?

A Yes, I did.

Q Is that what weapons you had as you went back to the house?

A Yes, it was.

Q Let me ask you this, to back up. When you were out there with the Kellers in the woods and they were being shot, did you have occasion to – was there someone else out there, an animal out there?

[157] A There was a dog.

Q A dog out there?

MR. FORD: Judge. I'll renew my objection that I made before the trial started as to the dog and the evidence of the dog. I think it's irrelevant and inflammatory.

THE COURT: Overruled.

BY MR. VON SCHUCH: (Continuing)

Q Had you seen that dog in the house before?

A Yes, it was. It was like in the pantry there in the kitchen.

Q And what happened to the dog out in the woods?

A I thought Mike shot it. He like leaned down towards the dog and shot.

Q When you walked back up to the house, what did you have occasion to see?

A When we went back in the house?

Q Yes.

A The dog was sitting in the hallway.

Q What reaction did you and Michael Williams have to that?

A It just freaked us out.

Q Now, when you got back to the house, what [158] did you and Mr. Williams do at that point?

A I think we loaded up the bigger stuff, like the T.V.

Q When you say the bigger stuff, you said a T.V.?

A T.V. and microwave and stereo.

Q Microwave? Let me show you this. Does this look familiar? Have you seen this? Is that the microwave?

A Yes, it is.

Q A T.V. What else was loaded in there?

A A stereo and some speakers.

Q Where were those items taken when they were taken out of the house?

A In the back of the Jeep.

Q In the back of the Jeep, all right. And after all the items were taken out of the house, what did you do and what did Michael Williams do at that time in the house?

A He wanted to burn the house.

Q What did you do and what did he do?

A I grabbed some lamp fuel and poured some like on the back bed and the back living room and in the hallway.

Q You poured some on the back bed; is that correct?

[159] A Yeah.

Q Is that the same bed –

A Yes, it was.

Q – where you and Michael Williams had raped Mrs. Keller?

A Yes, it was.

Q After you poured that, what did you do; did you light it?

A I lit it.

Q Did Michael Williams light a fire in there?

A He like started one on the couch in the front room.

Q He started one in the front room? Did you leave the house at that time?

A After the fire was going.

Q Now, what did you take with you as you left the house? What did you leave the house in? You walked there. How did you leave?

A The Jeep.

Q Was that the Jeep that was parked out in front of the Kellers?

A Yes, it was.

Q When you left the house, where did you go?

A We was heading to Fredericksburg.

Q How did you get there? Where did you go? [160] Which way did you leave Cumberland County, do you know?

A I don't really know. I think we took 60 and went into Richmond.

Q You went into Richmond? Did you get lost in Richmond?

A Yeah.

Q Who was driving?

A Michael was.

Q What weapon did you have at this time?

A I had the .38.

Q And what did he have?

A The .357.

Q What happened when you got lost in Richmond?

A We walked into a bar first and then I asked for directions and then we walked out, and while we was walking back to the Jeep, there was a cop at a stoplight.

Q A police officer at a stoplight?

A Yeah.

Q Did you all ask him for instructions?

A Mike did.

Q Mike stopped with a Jeep full of stolen property and walked up to a police officer or drove up to a police officer and asked him for directions?

A Yeah. Well, we was walking back towards the Jeep when he stopped there, when he seen him.

[161] Q And did he give you directions?

A Yeah, to get to 95.

Q When you got to 95 where did you go?

A To Fredericksburg.

Q Now, why did you all go to Fredericksburg?

A I knew some people there.

Q What were you going to do when you got there?

A Sell the stuff.

Q So this was how you were going to get money?

A (Witness indicates affirmatively.)

Q You only got how much, six dollars, out of her purse, Mrs. Keller's purse?

A Yes.

Q And you don't know whether or not Michael Williams received any money or found any money when he was looking around?

A No. I seen Mr. Keller's wallet up on the counter, but it was empty.

Q Where did you go when you got to Fredericksburg?

A First, we went to Don Jett's.

Q Who is Donnie Jett?

A A friend of mine.

Q He was a friend of yours. Was it still dark [162] or was it light when you got there; do you recall?

A It was dark.

Q Was he there?

A No, he was not.

Q Did you wait for him?

A Yes, we did.

Q Did he ever show up?

A About –

Q I mean, that morning.

A Yeah, in the morning.

Q What time did he show up?

A I'm not sure; maybe around 6:00 or 7:00. It was just getting daylight.

Q Did you sell him any property at that time?

A A T.V. Well, later on, not at that point.

Q At that time?

A No.

Q When you first stopped, did you sell him any at that time?

A No.

Q Where did you go then after you left Mr. Jett's?

A We went by Dave Sine's.

Dave Sine?

A Yeah.

[163] Q Do you know Dave Sine?

A Yes, I do.

Q Was he a friend of yours, too?

A Yes, he was.

Q Do you know what time it was you arrived at the Sines?

A Around 10:00 or 10:30 or 11:00.

Q You think that's when you arrived. Do you know how long you stayed there?

A I'm not sure. We ate lunch.

Q You ate lunch there; they fed you?

A Yeah.

Q Did you sell them any property?

A A VCR.

Q Who bought the VCR; Mr. and Mrs. –

A Oh, that was in the house.

Q I'm sorry. Did you sell Mr. Sine any property?

A Oh, yes.

Q What did you sell him?

A A VCR.

Q Did you sell Mrs. Sine any property that you are aware of, that you recall?

A I don't think so.

Q Did they have children?

[164] A Yes, they do.

Q Was anything given to the children by either you or Michael Williams?

A I gave them like a bunch of fake jewelry.

Q When you left the Sines, who was the next individuals that you – Do you know how much you got from the Sines?

A I think twenty dollars or something like that.

Q Twenty dollars, you think? Where did you go after that?

A I think we went back to Don Jett.

Q Do you know a Tammy Tolley and Donald Ramey?

A Yes, I do,

Q Did you see them before you went back to Jett's or after you left Jett's?

A After we left Jett's house. We was going over to another friend's house and we passed him coming back out from his house.

Q Donald Ramey?

A Yeah.

Q Did Tammy Tolley, did she buy any property that you had in the truck?

A I'm not sure. I can't remember.

[165] Q Did Mr. Ramey buy any property, that you can recall?

A A stereo and, I think, speakers.

Q He bought a stereo. Do you know how much he paid for the stereo?

A I forget.

Q Were both you and Michael selling this property out of the Jeep?

A Yeah. I was like sitting up in front.

Q Now, after you ran into the Rameys, did, you go back to see Donnie Jett or did you go down to the river after that?

A I think we went down to the river.

Q At what point in time did Mr. Jett buy a T.V.?

A When we went back over there before we met Ramey.

Q Do you know how much he paid for the T.V.?

A I can't remember; maybe forty or fifty dollars, something like that.

Q Who was holding the money?

A Mike took half and handed half to me.

Q You then went down to the river; is that correct?

A Correct.

[166] Q How did you get down there?

A Drove.

Q Did you still have a weapon with you at this point?

A The .38.

Q When you went down to the river, did you have a weapon with you?

A I had a .38 with me.

Q What did Michael Williams have?

A The .357.

Q Are you sure about that?

MR. FORD: Objection, a leading question.

THE WITNESS: I believe so.

THE COURT: Sustained.

BY MR. VON SCHUCH: (Continuing.)

Q When you got down to the river, what did you do with the Jeep? Let me ask you this. Did you have any property left in the Jeep that you hadn't sold?

A A microwave, some rifles, and a level.

Q What did you do with that property?

A We threw it in the river.

Q There was a microwave you threw in the river?

A Right.

[167] Q Did you have any rifles left?

A Two.

Q Two rifles? Would they be the carbine loading rifles?

A Yeah.

Q Were they thrown in the river?

A Yes, they was.

Q What about the .357?

A It was thrown in there, also.

Q Who threw the .357 in the river?

A Mike Williams.

Q Did you reload that .357?

A Yes, I did.

Q The .357, you reloaded that. Do you know what type of ammunition you put in it?

A Yeah. It was .38 Special.

Q When you had shot Mrs. Keller, do you know what type of ammunition, what those two bullets were in the gun.

A I believe they was .357.

Q And you reloaded it with different ammunition; is that what you're saying?

A (Witness indicates affirmatively.)

Q So that when you threw –

THE COURT: Would you answer so it goes on [168] the record?

THE WITNESS: Yes.

BY MR. VON SCHUCH: (Continuing)

Q When you threw the .357 in the river, then it still had one .357 in it, at least one; is that right?

A Yes, sir.

Q After you threw the items in the river, what did you and Michael Williams do at that point?

A We went to like a pool hall place and drunk a beer and called a taxi to take us over to the bus stop.

Q And how did you get back to Richmond?

A Greyhound.

Q Do you know what day it was when you got back to Richmond or what time it was that you got back to Richmond?

A I can't remember.

Q Who came and picked you up?

A Mike's brother.

Q Now, you indicated that at the time you got to the river you had the .38?

A Correct.

Q And Michael Williams had the .357?

A Correct.

Q Is it my understanding that you said you [169] were the one that threw the .357 in the river?

A No. Michael did.

Q Michael threw the .357 in the river. what did you do with the .38?

A I handed it to Mike.

Q When you came back to Richmond, who had the .38?

A Mike did.

Q After you got back to Cumberland, did you go home?

A Yes, I did.

Q Did Michael Williams leave you?

A Yes, he did.

Q Who had the .38?

A Michael did.

Q Do you know what Michael Williams did with the .38?

A No, I do not.

Q When you came back to Richmond, were you supposed to be at work Monday?

A Yes, I was.

Q Did you go to work?

A No, I didn't.

Q Can you tell us, did there come a point in time when Officer Tyree and Meinhard got an occasion to [170] come by to talk to you?

A Yes, they did.

Q Did you go with them somewhere?

A Yes, I did.

Q Where did you go with them?

A Over here to the police,

Q To the Sheriff's office?

A Yes.

Q Did they take your boots?

A Yes, they did.

Q Let me show you those boots and see if those – Do you remember these?

A Yes, I do.

THE COURT: Are they your boots?

THE WITNESS: Yes.

BY MR. VON SCHUCH: (Continuing)

Q They were taken from you?

A Yes, they was.

Q Now, at the time that you talked to Officer Tyree and Meinhard were they asking you about the Kellers?

A I can't remember.

Q Did you tell them anything about the Kellers or anything that you and Michael Williams had done at that time?

[171] A No, I did not.

Q And you went home; is that correct?

A Correct.

Q Subsequently, if I understand it, what happened to you that evening?

A I was arrested.

Q And you were incarcerated?

A Yes, I was.

Q The next day, on March 2nd, did you have occasion to talk to Officer Tyree?

A I believe so.

Q Where was that?

A At Piedmont.

Q What did you tell Officer Tyree at that time?

THE COURT: Now, I'm not sure the Jury knows where Piedmont is.

BY MR. VON SCHUCH: (Continuing)

Q When you say Piedmont, what are you' referring to?

A Piedmont Regional Jail.

Q A jail. You were locked up on a misdemeanor firearms charge and Mr. Tyree came out there to talk to you; is that correct?

[172] A Yes, I was.

Q Did you have any attorney on the misdemeanor charge?

A No, I did not.

Q Did you have an attorney before you talked to Mr. Tyree?

A No, I did not.

Q Did you talk to Mr. Tyree at that time?

A No. I told him I wanted a lawyer.

Q You got a lawyer then; is that right?

A Correct.

Q Then you went back and you and your lawyer attempted to – Well, what did you and your lawyer do?

A He just asked me what happened.

Q Well, before you told anybody what happened, did you enter into any agreement with the Commonwealth?

MR. FORD: Again, Judge, it's his witness and the Court has to presume at this point in time that he is competent to testify. He's not been impeached at all. I think what Mr. Von Schuch is attempting to do is to bolster his witness before an attack by me on cross examination to impeach him. I think it may be proper, but it's

proper only on redirect. In other words, he's putting the cart before the [173] horse at this point in time.

MR. VON SCHUCH: I am entitled to –

THE COURT: He is entitled to ask his client what he did.

MR. FORD: He's asking him about whatever deal he may have had, I believe, as I understood the question.

THE COURT: I don't know whether he had any or not. I don't know what the answer to the question is.

MR. VON SCHUCH: That's correct. Judge, I'm entitled to ask this man – I mean, Mr. Ford stood up here and told the Jury in opening statement that there was going to be a dispute about who shot who. Now, obviously, that places this gentleman's credibility in question and, obviously, I think I would be entitled to ask him those questions to bring out the sequence of events as to when he talked, why he talked and so forth and so on, and I believe that's perfectly proper on cross examination where the witness of this issue, where his credibility is being challenged.

MR. FORD: What I said in opening statements is not evidence, and if Mr. Von Schuch thinks [174] that I impeached his witness on opening statement –

THE COURT: As I told you all, what you all say is not evidence.

MR. FORD: Yes, sir.

THE COURT: We know that and they know that.

MR. VON SCHUCH: I mean, I think the law in Virginia is pretty clear that I'm entitled to ask him these series of questions about whether or not he's testifying pursuant to promises or anything else. The Commonwealth is entitled to bring that, and has an obligation to bring that, before the Jury. To shut that off would keep exculpatory evidence from the defendant, it would prevent the Jury from knowing the whole story, and that's all I'm trying to do, is tell them exactly what happened so they can form their own opinion about this whole matter.

MR. FORD: I agree with his point, Judge, except that he's wrong procedurally. He's got the cart ahead of the horse. Right now he stands unimpeached and he presents him to the Court and to the Jury – I assume he presents him to the Court and the Jury as an unimpeachable witness at this point. Now, if I get him on cross [175] examination and I do a wonderful job and he becomes impeached, then I think that he's correct. He can come back in and ask him whatever be wants to, to try and rehabilitate his witness, but he's doing it now when there is no evidence of any cross examination or no evidence that he's been impeached.

MR. VON SCHUCH: I'm not trying to rehabilitate anybody at this point, Your Honor. I'm just trying to get from him the story as to what happened. The Commonwealth, as far as I understand the law in Virginia, is entitled to go through the sequence of events and to bring before the Jury, what, if any, promises were made to him and whether or not he's testifying pursuant to that. Now, I know of no law that prohibits me from doing that at this point.

THE COURT: Neither do I.

MR. FORD: At this point In time whether he has received a deal or not is not relevant evidence as to whether a murder was committed; it's not. And that doesn't go to prove that he shot Mr. and Mrs. Keller, or he shot Mr. and Mrs. Keller, or anything like that. That has nothing to do with that. All that has to do with [176] is his credibility and his credibility has not been placed in issue at this point in time.

THE COURT: I believe you understand on cross examination if you go beyond him asking about that, then he will be your witness.

MR. FORD: Well, I would object to that as limiting my cross examination unfairly. I understand –

MR. VON SCHUCH: That's the whole point, Judge, is that if I can't do it, how can he? I meant I think we get to that point, too.

MR. FORD: I'm not saying he can't do it, Judge. What I'm saying is that's doing it incorrectly. He's doing it before he's impeached.

THE COURT: He's merely asking him these questions and then you'll have your opportunity to cross examine him on any statement he makes.

MR. FORD: Well, I can get into it in front of the Jury if you want to do that or if you would like to take them out. I'd ask that you take them out at this point in time so that I can –

THE COURT: All right. I'm sure they'll be glad to stand up and walk anyway.

[177] (The Jury retired to the jury room.)

MR. FORD: Judge, what Mr. Von Schuch is attempting to do I don't – He's attempting to take the steam out of my cross examination. I agree with Mr. Von Schuch that on redirect he can rehabilitate his witness, but if he's attempting to do it now – I agree his credibility is going to be an issue, it certainly is, but at this point in time it's his witness on direct exam and there is a presumption that he is credible until he is impeached on cross examination. If I don't do a good job and he's not impeached, then he doesn't have to get to his bolstering evidence. If I do a wonderful job and he is impeached or he thinks that he may be impeached, then he can do that, what he is attempting to do right now. But what he is attempting to do right now is just take the steam out of my cross examination, trying to get before the Jury that he has made a couple of errors in some of the statements he's made and some of the deals that he's had, something I would certainly bring out before him on cross examination.

MR. VON SCHUCH: Judge, I don't limit [178] Mr. Ford's cross examination by one question. This gentleman is an eyewitness to this. He's a co-defendant and his credibility, by virtue of the fact that he is a co-defendant, is in issue. There are special instructions concerning the credibility of co-defendants in this matter. I would point out to the Court that the issues that I'm trying to bring out here are simply what he did and how he came to the point that he is here today before the Jury, and I think they are entitled to know that, not on cross examination but on direct examination. I'm not taking

any steam out of his cross examination. I don't control that one bit.

Mr. Woodson has already told the Jury about this witness, I believe, or told what he would say or some of what he would say in opening statement. I'm just simply trying to show the Jury how he got here today, and I believe I'm entitled to show that so that they have an opportunity to – If Mr. Ford stands down and doesn't ask him a single question, he can stand up on closing argument and argue that this man is not a credible witness. I am entitled to bring this to the Jury so that they have some [179] basis of judging that, whether he asks a single question or whether he doesn't ask a single question of this witness, and that's all I'm attempting to do. There is nothing here that deprives him of any right that he has. If he disapproves of it as a matter of trial tactics, this is not gamesmanship. This is the law.

MR. FORD: Number one, I resent being characterized as trying to play gamesmanship. That's the first thing. The second thing, I think, if Mr. Von Schuch –

MR. VON SCHUCH: Your Honor, I meant nothing personal by that or anything like that. I'm just pointing out that we're talking trial tactics, if that's what the argument is over.

THE COURT: I don't think it's any doubt this is trialmanships is what you all are arguing.

MR. FORD: In taking Mr. Von Schuch's example, if I were to sit down and not ask this man one question, then I do not think that I could properly argue to the Jury that he is an incredible witness because I have

not-asked him anything to put his credibility at issue. Mr. Von Schuch has called him as a direct witness [180] and at that point in time he is deemed to be credible unless on cross examination there is some bias discovery. If I put a hole in his story or if I make him look a little bad, that's fine.

THE COURT: You mean he can't ask this man what he did? He's just told more or less what he told the officer. He's told us that, what he told the officer. And you are contending that he doesn't have the right to say, "Why did you tell it to him?"

MR. FORD: Yes, sir. I don't think he has the right to basically impeach his witness. I mean, what he's getting his witness to say is, "I lied to the police officer." Doesn't that impeach him? Yes.

THE COURT: Is that what you're going to ask him?

MR. VON SCHUCH: That's not impeachment, Your Honor. I'm asking him about why he made the first statement, and I think the Court has heard testimony from Officer Tyree, as well as Officer Meinhard, that they did not have any basis whatsoever to arrest this man for a single charge until he came and made his statement about what [181] he and Michael Williams did and only –

THE COURT: If what you are going into now is to ask him if he lied to the officers, I'm not going to allow that.

MR. VON SCHUCH: Or the reason as to why it was wrong. He could do that. Once I say, "Didn't you tell the officer this" –

THE COURT: Yes.

MR. VON SCHUCH: – "isn't that a lie; isn't that against the facts" –

THE COURT: Then I'm going to allow it, but I'm not going to allow it at the first.

MR. VON SCHUCH: Well, then I would have an objection that he was outside the scope of direct examination, because this Court has ruled that the Commonwealth cannot ask him those series of questions. Therefore, if Mr. Ford were to do that, that would be outside the scope of direct examination and I would object. At that point I believe Mr. Cruse becomes his witness, as the Court has indicated.

MR. FORD: Once I ask him, in a particular statement, whether he made the statement to officer Tyree and whether in fact he said 'x' and 'x' was wrong, that impeaches him at that [182] point and after I've finished my cross examination, I think that Mr. Von Schuch is entitled at that point to come back and ask him on redirect, "Why did you make that statement; why was it wrong? What was the reason behind that?" He's trying to do that ahead of me. He's trying to do that on direct, which he can't, because he's basically impeaching his own witness.

MR. VON SCHUCH: I'm not impeaching my witness. I'm not asking him impeaching questions. Impeachment is asking him if he made a statement, having him deny it, admit it, or not remember it, and then bringing on another witness to show that he made an inconsistent statement. That's impeachment. I'm not

impeaching him at all. I'm simply explaining how he got to this point in time. Judge, he has testified that he made a statement to Officer Tyree and Meinhard. It was after that that he was charged. The question is why did he make that statement at that time. That's where we are right now.

MR. FORD: I would ask Mr. Von Schuch to proffer to the Court what his series of questions will be along those lines and find out where we [183] are going.

THE COURT: All right, let's see what he's going to say.

BY MR. VON SCHUCH: (Continuing)

Q On March 1st – Excuse me, I guess we were on March 2nd, Mr. Cruse, if you would answer these questions so the Court can hear the evidence. Did you have occasion to talk to Officer Tyree after you had a lawyer?

A After I had a lawyer?

Q Yes. At the Piedmont Jail?

A I didn't talk to him until I had a lawyer.

Q Yes, When Mr. Baber – Was he your lawyer?

A Yes.

Q – when he was there, did you talk to them at that time, Officer Tyree with Mr. Baber?

A Over at the Sheriff's Department, yes.

Q I'm sorry. Over at the Sheriff's. You were taken from the Jail to the Sheriff's Department.

A Yeah.

Q Did you talk to him at that time?

A Yes, I did.

Q Were any promises made to you at that time in exchange for your talking to them?

A Yes, it was.

[184] Q What was that promise?

A I can't remember.

Q Were you to get the death penalty?

A No. He wouldn't include that.

MR. FORD: I'm sorry for interrupting, but that is asking him what the basis for his statements are, and that's something that's proper on cross examination.

MR. VON SCHUCH: If we could just finish.

MR. FORD: Okay, I'm sorry.

BY MR. VON SCHUCH: (Continuing)

Q It was the next day, I believe, on March 3rd, that you had occasion to take officer Tyree to the river; is that correct?

A I know I took him there, but I don't remember which day.

Q And when you got to the river – to cut to the chase you showed him where certain items were, is that correct, and those items were recovered?

A Yes.

Q You were taken back to the jail?

A Yes.

Q Did you have occasion to have different lawyers after Mr. Baber was released from representing you?

[185] A Yes, I did.

Q Did you talk to the police again with your new lawyers –

A I can't remember.

Q – in the Sheriff's Department here?

A I believe so.

Q And is what you told Officer Tyree and the officers at that time what you have told the Jury?

MR. FORD: That's bolstering.

THE WITNESS: I'm not sure.

BY MR. VON SCHUCH: (Continuing)

Q You don't remember?

A I was confused then.

Q Well, do you remember talking to him in the Sheriff's Department?

A Yeah, I remember talking to him.

Q Do you remember what you told them the last time you talked to them?

A The last time I talked to them?

Q The first time you talked to them with these two gentlemen right here. Do you remember that?

A Yes. I told them what I'm saying now.

Q Do you remember what you told them?

A Exactly what I'm saying now.

[186] Q Is that what you're telling the Jury?

A Yes, it is.

Q Did you have any promises made to you at the time you told them the story that you have told the Jury?

A No, I did not.

Q Do you have any promises or are you testifying under any agreement at this time?

A No, I am not.

Q Are you charged with capital murder?

A Yes, I am.

Q Do you know what the maximum punishment for that is?

A Yes, I do.

Q What is that?

A The death penalty.

MR. VON SCHUCH: Judge, those would be the essence of that series of questions about those items.

MR. FORD: And I think at the time he asked him whether his statement is consistent with what he told the Jury just recently, that's bolstering because he hasn't been impeached at this point. When he says, "Is what you told your two lawyers, to the police, what you told the

Jury," that's bolstering at this point, because he has not been [187] impeached. And the evidence about, "Was it a deal? Do you have a deal," all of that stuff comes out on cross examination and then he can rehabilitate him, if he feels like he's been impeached, by asking him reasons behind it.

THE COURT: I'm going to do it that way.

MR. VON SCHUCH: What way is that?

THE COURT: I'm going to allow him to question once you've finished, other than that.

MR. VON SCHUCH: Am I entitled to ask him whether or not he has a plea agreement at this time with the Commonwealth?

THE COURT: Yes. You can ask him that and that's all.

MR. VON SCHUCH: In other words, the questions that the court is saying that I cannot ask him are whether or not what he told –

THE COURT: Whether or not he told them –

MR. VON SCHUCH: – the police is the same thing as what he's telling the Jury?

THE COURT: No. I don't want you to go into that unless he brings it up.

MR. VON SCHUCH: Well, Judge, he's going to bring it up. I mean, there's no question about that.

[188] THE COURT: I understand he's going to bring it up and then I'm going to allow you to bring it, you to cross examine.

MR. FORD: And that's proper.

MR. VON SCHUCH: You are going to allow me to cross examine him on that?

MR. FORD: Redirect.

THE COURT: I mean redirect.

MR. VON SCHUCH: I would be then entitled to ask him about talking to the police.

THE COURT: You would be allowed to go on all of those questions, I feel, all the questions that are brought up.

MR. FORD: After my cross?

THE COURT: After you cross.

MR. VON SCHUCH: Well, I'm talking about right now. I want to make sure I don't disobey any order of the Court and I'm asking – You have indicated that I can ask him whether he is testifying at this time pursuant to any plea agreement or promise with the Commonwealth, and you have indicated I could do that.

THE COURT: That's right, you can ask that.

MR. VON SCHUCH: I cannot ask him whether or not the statements that he made are the same as [189] the statements he made –

THE COURT: No.

MR. FORD: I would object to even allowing him to ask that one about the plea bargain.

THE COURT: I know you would object to that, but I'm going to allow it.

MR. FORD: Note my objection.

MR. VON SCHUCH: The Commonwealth would have an objection, too. We are entitled and we've got to have one.

THE COURT: All right. You may have an objection, too. Do you want one, too, Mr. Woodson?

MR. WOODSON: I don't believe; not right now. I'll save mine.

THE COURT: I was going to ask for a break when you got through here, but it looks like we've let the Jury have such a break.

MR. VON SCHUCH: I'm ready to go.

THE COURT: Bring them in.

(The Jury returned to the Courtroom, and in the presence of the defendant and counsel the following ensued.)

BY MR. VON SCHUCH: (Continuing)

Q Mr. Cruse, let me ask you, at this point in [190] time for what you are up there telling this Jury do you have any promises in exchange for your testimony and for what you're saying, from the Commonwealth of Virginia?

A No, I do not.

Do you know what you are charged with?

A Yes, I do.

Q What is that?

A Capital murder.

Q And do you know what the maximum punishment for that is?

A The death penalty.

Q And do you know who is going to decide whether or not you live or die at this point?

A Not really.

Q Have you ever been convicted of a felony?

A No, I have not.

Q Have you ever been convicted of a misdemeanor involving moral turpitude, such as lying, cheating or stealing?

A Yes, I have.

Q How many of those offenses?

A One, I think.

Let me ask you one more question, the last question. When you were at the Piedmont Jail under arrest for a misdemeanor firearms charge, you agreed to talk to [191] the police; is that correct?

A (No response.)

Q I mean, you had Officer Tyree come over and your lawyer was there and so forth and so on; is that correct?

A Over here at the Sheriff's Department?

Q Over here at the Sheriff's Department.

A Yes.

Q At that point in time were you charged with any of these offenses?

A No. I was not.

Q When were you charged with these offenses?

A After I talked to them.

Q Can you tell the ladies and gentlemen of the Jury why under those circumstances you would agree to talk to the police and why you talked to them at all in the first place about any of this?

A To get it off my chest.

Q To get it off your chest?

A (Witness indicates affirmatively.)

MR. VON SCHUCH: Would you answer any questions that Mr. Ford has, please?

[192] CROSS EXAMINATION

BY MR. FORD:

Q Mr. Cruse, your testimony in front of the Jury leaves me feeling that you had a detached involvement in this thing. You mentioned that Mike, told you to do this, it was Mike's idea to rob the store, Mike had them strip, that kind of stuff. Let me ask you this, your reaction to the suggestion to rob the Bear Creek Market was what?

A Yeah.

Q Okay, no problem. All right. How about going into the house? Did you have any reservations about that? You went in first, you said?

A Yeah. Mike told me to go in first.

Q Mike told you to go in first, so you went on in?

A Yes, I did.

Q No, problem. How about robbing and tying up the Kellers, you know? At the point that you were doing the robbery, you had gotten hold of a .38 pistol and you loaded it or It was loaded already. I'm sorry, whichever way it was. So you had a .38 fully loaded and yet you continued to ransack the house; is that right?

A Correct.

[193] A And Mike wasn't following you around with a gun or anything, holding it to your head at that point, was he?

A No, he was not.

Q And how about the rape of Mrs. Keller? He didn't have a gun on you then, did he?

A No, he did not.

Q And it didn't stop you from going outside with the Kellers. You could have run at that point in time, couldn't you?

A He told me to follow him. He said, "Come on,"

Q He wanted you to follow him, okay, and you were a long distance away, you said, kind of removing yourself from the situation?

A About ten foot.

Q I'm sorry?

A Maybe about ten foot, something like that.

Q But, nevertheless, you were in the back?

A Yes, I was.

Q And, of course, you participated also in setting the fire in the house?

A That's correct.

Q With Mike's direction; is that right? Mike made you do it?

[194] A He said, "We're going to burn the house," and I grabbed lamp fuel and did it.

Q Well, let me get to the part in the thicket now. You testified when Mr. Von Schuch asked you a question, I believe you said that there was yourself and Mr. Williams –

A Correct.

Q – and that opposite you was Mrs. Keller and opposite him was Mr. Keller; is that right?

A Correct.

Q And you said that they were approximately this far, to the end of the table right there, from you?

A Yeah, about around to the end of the table.

Did you look at Mrs. Keller when you fired the shot?

A No. I was looking at Mike.

Q Was your gun out here?

A Yes, it was.

Q So your gun was out and you turned your head?

A I was looking at Mike.

Q You were looking at Mike and you had your arm extended and Mrs. Keller was about right here. Would you say a foot?

A I don't really know.

[195] Q You don't remember?

A I don't –

THE COURT: He said he doesn't really know.

BY MR. FORD: (Continuing)

Q Doesn't really know, okay. But is that a close approximation?

A I'm not sure.

Q I'm just using your measurements. You told him to the end of the bench right there and I'm holding my arm out.

A Yeah.

Q And you also switched the gun several times. Your testimony is that first you had the .357, is that right because you showed it to Ms. James?

A Correct.

Q And then at some point when you are outside the house, you switched the gun. All of a sudden Mike has got the .357; is that right?

A Correct.

Q What was the plan for the gun? Why did you switch them?

A Mike wanted it.

Q You don't know, okay. So you get into the house and Mike has got the .357?

[196] A Correct.

Q And you don't have anything? Well, then you pick up a .38; is that right?

A Correct.

Q So now you've got a .38 and he's got a .357 and then you rob, you tie them up, and then you get back to where Mrs. Keller is in the bedroom. Now, you've taken her back there; is that right?

A (Witness indicates affirmatively.)

Q And you had tied them up before, hadn't you?

A Correct.

Q And so Mike still has the .357 and you've got the .38 and then at some point when you're coming in and he's going out, you switch the guns again?

A He wanted the .38.

Q He wanted the .38. No other reason but for that?

A I don't know.

Q That's when the switch occurred; is that right?

A (Witness indicates affirmatively.)

Q And then finally we get down to the woods and then you say you are leaving and you step out and you've got the .38 or the .357, which is it?

A At what point?

[197] Q When you are stepping out from the woods onto the roadway, do you have the .38 or the .357?

A After the shooting?

Q Yes.

A I had the .357 at that time.

Q You had the .357, and then as you are walking up the road, you switch it again?

A No. Right when we come out of the woods he handed me the .38 to reload and I handed him the .357 so I could reload the .38.

Q So you passed guns back and forth three or four times for no particular rhyme or reason? I mean, there was no plan to switch the guns, was there?

A No.

Q Now, let's get to you talking. There's been some evidence about your making some statements to the police officers at various points in time; is that right?

A Right.

Q Let's take the first one. On March 1st when you were interviewed by Deputy Meinhard and I believe, Special Agent Tyree, what did you tell them? Did you tell them the story you're telling the Jury now?

A No, it was not.

Q What did you tell them in that first story?

A We went to Richmond, bar hopping.

[198] Q So you told them you went to Richmond, bar hopping, and that was it?

A I believe so.

Q Do you recall telling them that you had been to Bear Creek Market and called from there and gotten a ride to Richmond?

A I believe so, something, or his –

Q Okay. So you told them something like that?

A – his cousin's house or something.

Q And you didn't remember what part of Richmond you traveled to? You just went bar hopping that night?

A I don't know my way around Richmond.

Q So this is the first time to the police officers, so you're lying to the police officer at that point, right?

A Correct.

Q The second contact you had was on March 2nd and that one you asked for a lawyer, basically?

A Correct.

Q The heat was starting to come on. Had you been arrested for a misdemeanor? Was that when you were picked up for the misdemeanor firearms charge, a concealed weapon or something?

A Yeah.

[199] Q So then we get to the third time you talked with Agent Tyree, and now we're starting to get a little bit more in depth. Now you're starting to say, "Well, I guess I'd better tell them something." Is that right?

A I told them all of it.

Q You told him all of it? Are you sure?

A All the questions he asked.

Q All the questions he asked. I guess that's the key phrase, isn't it, all the questions he asked? Did he ask you about the rape?

A I'm not sure; I can't remember.

Q You're not sure. In fact, you didn't tell him about the rape, did you, on this particular occasion?

MR. VON SCHUCH: Judge, here I would object as being outside the scope of direct, as I indicated before. I felt these were questions that the Commonwealth had the right to ask and bring to the Jury first and I would make that objection at this time.

THE COURT: Overruled.

BY MR. FORD: (Continuing)

Q You didn't tell him about the rape, did you?

A At what point?

Q The third statement, I'm talking about, [200] March 2nd, Special Agent Tyree, Cumberland County Sheriff's Office. Mr. Woodson is there and Mr. Baber is there; is that right?

A Correct.

Q And you made a fairly detailed statement, some fifteen pages of questions and answers, and not once in there did you mention the rape of Mrs. Keller, did you?

A They didn't ask me.

Q They didn't ask you. Did you also tell Agent Tyree that you took the stuff and sold it in Richmond?

A Yes, I did.

Q All the stuff that you had taken from the house, you told him you sold it in Richmond, didn't you?

A Yes I did. I was trying to protect my friends.

Q And that the only reason you went to Fredericksburg, was to throw the stuff in the river and burn the vehicle, and that was a lie, wasn't it?

A About –

Q Selling the stuff in Richmond?

A Yes. I was trying to protect my friends at that point.

Q I'm sorry?

A I was trying to protect my friends at that [201] point.

Q Protect your friends. Well, that's a noble cause.

MR. VON SCHUCH: Judges I object to the commentary.

MR. FORD: I'm sorry, Judge. I apologize. I'll not make that comment again.

THE COURT: Don't do it again.

BY MR. FORD: (Continuing)

Q So you were trying to protect your friends by not mentioning anything about that?

A (Witness indicates affirmatively.)

Q Doesn't it seem reasonable to you that you are trying to protect yourself at this point?

A No. I was keeping them out of it.

Q And you protect your friends –

A I was keeping them out of it.

Q I'm sorry?

A I was trying to keep them out of it.

Q Trying to keep them out of it. It stands to reason, doesn't it, that you hold yourself in higher esteem than you do your friends don't you? I mean, you want to protect yourself a lot more than you do your friends, don't you?

[202] A In a way.

Q In a way. So what you're doing is you're telling us a lie at this point too. You're protecting yourself –

A I'm not protecting myself. No.

Q – by telling these jury members that Mike Williams is the one that fired the trigger, that he is the one that did all the shootings and all you did was fired one time and then stepped away. Isn't that the truth, Mr. Cruse?

A Did I say that? I don't believe I did.

Q I'm asking you if that's the truth.

A No, it's not the truth.

Q Are you trying to protect yourself now?

A I am not trying to protect myself.

Q Well, we've got you lying in your first statement. We've got you lying in your third statement. And you just said that you didn't mention the rape because they didn't ask about it; is that right?

A I don't think it was exactly lying. I just wasn't telling all the story at the same time. It's all the same. It's been all the same only I added more to it until I gave them everything that happened.

Q I understand where you might be able to leave a rape –

[203] A I'm not lying.

Q – out of a situation like that. I mean, that's not something that really comes to mind very easily.

MR. VON SCHUCH: Judge I object. That's argumentative.

THE COURT: Please don't do that again.

MR. FORD: Yes, sir Judge.

BY MR. FORD: (Continuing)

Q And isn't it a fact that you didn't tell the police about the rape incident until they had talked to Johnny Williams and then they came back to you and asked you point blank about that, hadn't they?

A And then I answered them point blank.

MR. VON SCHUCH: Judge, excuse me, I would object. I don't know how he would know what Johnny Williams told the police.

BY MR. FORD: (Continuing)

Q I'll rephrase it. At some point in time the police came back to you and asked you about the rape, confronted you directly about it?

A Correct.

Q And then you said yes?

A I told them.

[204] Q And in point of fact at that point in time you had been charged with just first-degree murder?

A I'm not sure.

Q You're not sure? Mr. Woodson, the Commonwealth's Attorney, was there during your third questioning, or actually your second questioning, so at some point in time they issued first-degree murder warrants for you then; is that right?

A Correct.

Q And then once the rape came out, that blew that deal, didn't it? That was a deal, wasn't it?

A Yes, it was.

Q A deal for your testimony?

A Yes, it was.

Q And you're saying, or you're telling the Jury, that there's no deal for your testimony now?

A No, there is not.

Q That you just stand there with a capital murder charge and the ultimate penalty is death?

A That's right.

Q And you are here on the stand today to help yourself in making your case, aren't you?

A I'm getting it off my chest.

Q You're getting it off your chest, but you're also getting the death penalty off your back aren't you?

[205] A Not really.

Q Have you talked with the Commonwealth's Attorneys about your testimony –

A What do you mean by that?

Q – either one of them? I'm sorry?

A What do you mean by that?

Q It's just a simple question. Have you talked with them about your testimony? Have you discussed with either Mr. Woodson or Mr. Von Schuch what you are to testify to today? Have they gone over your statements with you?

A I went over it with my lawyers.

Q With your lawyers. How many times have you gone over it?

A I'm not sure.

Q You're not sure. When was the last time you went over it with your lawyers; a day ago?

A It's been a little while ago.

Q A little while ago; how long ago, yesterday?

A A couple of weeks or something like that.

Q A couple of weeks? You haven't talked to your attorneys in a couple of weeks about this case?

A Oh, my attorneys, yes.

Q Well, that was the question.

A Okay.

[206] Q So yes. When did you last talk with your attorneys about this case?

A Today.

Q Today, all right. And you discussed your testimony with them, didn't you?

A I believe so.

Q What you were going to testify, what was going to be asked of you, what was going to be asked on cross examination, maybe?

A I believe so.

Q You believe so? Yes or no?

A Yes.

Q We also had a preliminary hearing here back in June of '93. Do you recall testifying in this case in a preliminary hearing in this case?

A Correct.

Q And as part of that preliminary hearing I asked you several questions on cross examination. One of those questions, and let me ask you this, do you recall me asking you, "Have you ever been convicted of a crime involving lying, cheating or stealing?" Do you recall that question?

A Yes, sir.

Q Do you recall your answer being, "No, sir"?

A Yes, I do. I was confused on that question.

[207] Q You were confused on that question. It was under oath, wasn't it?

A Yes, it was.

Q So you were lying at that point, too?

A I was confused at that point. I wasn't sure.

Q You were confused. What was confusing about that question to you?

A A lot of things. If you went through the ordeal I did and you have a lot of shit on your mind – pardon my language.

Q So it was confusing if I asked you, "Have you ever been convicted of a crime involving lying, cheating or stealing"? That was confusing to you?

A Correct.

Q But with all that stuff on your mind, you've been able to get our all of these facts that you've just testified to, to the Jury; is that right?

A Correct.

Q One other thing that puzzles me a little bit about the actual shootings in the thicket.

MR. VON SCHUCH: Judge, again, I would object to the commentary without it being attached in any way, shape or form to some kind of a question.

[208] THE COURT: Whether it puzzles you or not –

MR. FORD Well, I'm just trying to –

THE COURT: Go ahead. Well, just ask him the question.

BY MR. FORD: (Continuing)

Q Recalling your attention back to the shootings, you said that Mike fired first, you fired second, and that at some point in time Mike stepped back in surprise because Mr. Keller was getting up; is that right?

A Correct.

Q Had you moved at that point?

A I think I like jumped when I caught him out of the corner of my eye.

A And you and Mike weren't wearing any hoods or masks were you, while this robbery and things were going on at the Keller residence? They had a good look at your face, didn't they?

A Well, I had my hood over my face and my hair just a little bit showing until Mike took off his and then I went ahead and took off mine.

Q So you took off yours and you were walking around the house without any disguise on? You weren't disguised or anything like that, were you?

[209] A No.

MR. FORD That's all the questions I have, Judge.

REDIRECT EXAMINATION

BY MR. VON SCHUCH:

Q Mr. Cruse, let's go back and talk about the statements that you made to the police. The first statement you made was when you agreed to come down here, as I understand it, and they confiscated your boots; isn't that correct?

A Correct.

Q Did they ask you questions about the Kellers and what happened at the Keller residence and whether or not you were involved in that?

A At the point they took my boots?

Q Well, at any time when you were down here and they were talking to you.

A I believe so.

Q And did you make any admission or tell them in any way, shape or form that you were involved in this?

A That I wasn't?

Q That you were involved.

A Oh, that I were? Yes, I did.

Q No. I'm talking about the first time you [210] came down here.

A Oh, the first time?

Q Yes.

A No, I did not.

Q And that was a lie?

A Yes, it was.

Q Why did you lie to the police at that time?

A Because that was the story Mike made up.

Q Well, why did you tell it?

A I really don't know.

Q Well, what would have happened if you had told them the truth?

A I don't know. I was confused at that time.

Q Well, did you think they were just going to say, you know, "Don't worry about it. Just don't let it happen again"?

A No.

Q The second time you had an attorney, is that correct; Mr. Baber?

A Correct.

Q And I think this where we left off. You agreed to make a statement to the Commonwealth and did so at that time; is that correct?

A Correct.

Q And was that pursuant to a plea agreement [211] with the Commonwealth?

A Yes, it was.

Q I'm going to show you this and ask you if you can identify that, please. Take your time and read that.

A Yes, I do.

Q Can you read that to the ladies and gentlemen of the Jury, please?

A "I understand that if I cooperate with the Commonwealth, testifying against the other defendant in this case, agree to take a polygraph which corroborates my statement" –

MR. FORD: Judge, I'm going to object to any mention at this point, of reading his statement.

BY MR. VON SCHUCH: (Continuing)

Q Does not it state in there that you will not receive the death penalty?

A Yes, it does.

MR. VON SCHUCH: Insofar as that is concerned, I offer the agreement at this time.

THE COURT: This is *Thirteen*.

[212] BY MR. VON SCHUCH: (Continuing)

Q Mr. Cruse, you then talked to the police; is that correct?

A Correct.

Q And what did you tell them about what you and Mr. Williams did insofar as raping Mrs. Keller?

A I can't remember.

Q Did you tell them anything about it?

A I can't remember. I try not to think of that.

Q Well, you're going to have to think about it. The second time you talked to them, when you had that agreement, did you tell them about the rape?

A I don't think so.

Q What happened to that agreement?

A It was taken away, because on a later statement I told them more about the case.

Q About the rape. So that's gone?

A Correct.

Q You've indicated to the Jury you're charged with capital murder right now; is that correct?

A Correct.

Q Is it your understanding that the judge is going to decide whether you live or die?

A Correct.

[213] Q Who are your lawyers? Are they in the courtroom?

A Donald Blessings and Lee Harrison.

Q The last time you talked to the police you made a statement to them telling everything that happened; is that correct? Do you remember that?

A Correct.

Q And I'm not talking word for word. Essentially, is there any difference between what you told the police at that time and what you've told the Jury today?

A No, there is not.

Q I believe that Mr. Ford asked you about a preliminary hearing and I think he asked about, apparently, you having a misdemeanor conviction for lying, cheating or stealing, one conviction?

A That's correct.

Q You did not tell the Court that at that time, if I understand your testimony?

A Correct.

Q And I believe you indicated it was because you had a lot on your mind, and you used profanity?

A I was confused.

Q What was on your mind?

A Everything that happened.

[214] Q Everything that happened. I believe I tried to show you some pictures the other day, didn't I?

A Yeah.

Q What happened?

MR. FORD Objection, Judge. I don't think that has any relevance. What his reaction is to pictures has no relevance and no bearing on this case.

MR. VON SCHUCH: I think it has to do with his credibility. It has to do with how he feels. He is testifying, if it please the Court, that he wants to get this off his chest. And I think if his reaction is –

THE COURT: Answer the question.

MR. FORD: Note my exception, Judge.

BY MR. VON SCHUCH: (Continuing)

Q I tried to show you show pictures the other day. Do you remember what those pictures were of?

A The murder scene.

Q Did you look at those pictures?

A No, I did not.

Q What happened?

A I lost it.

Q How do you feel about what you have done to [215] the Kellers?

MR. FORD Judge, again, I renew my objection. That has nothing to do with this case. He is simply trying to play to the Jury's feelings.

THE COURT: Sustained on this.

MR. VON SCHUCH: Judge, again, I would submit to the Court, and I don't mean to argue, but his credibility has been placed in issue. He has indicated that

he has some feelings about this, what he has done, and I would submit to the Court that if he –

THE COURT: I think that you've shown that by what's already been said by this gentleman, and I think you've shown it sufficiently.

MR. VON SCHUCH: That's all the questions I have for Mr. Cruse.

MR. FORD No recross, Judge.

* * *

[This Exhibit Was Handwritten Originally]

Com. Ex 13
Jan. 4, 1994
/s/ JRS

I understand that if I cooperate with the Commonwealth, testify against the other defendant in this case, agree to take a polygraph which corroborates my statement,

the Commonwealth will ~~recommend that~~ inform the court of my cooperation in this case and will not ~~I receive a total active sentence of~~ ~~not~~ seek the death penalty in my case. ~~more than 50 years as an~~

~~appropriate sentence for me in this case.~~

/s/JPB
/s/JC
/s/RCWJr

3/2/93
/s/ Jeffrey A. Cruse
Jeffrey A. Cruse

/s/ James Baber
James P. Baber Defense Atty

/s/ Robert G. Woodson Jr.
Robert G. Woodson Comm. Atty.

VIRGINIA:

IN THE CIRCUIT COURT
FOR THE COUNTY OF CUMBERLAND

[Caption Omitted In Printing]

* * *

[239] The witness, DEBORAH KAY, M.D., having first been duly sworn, was examined and testified on her oath as follows:

DIRECT EXAMINATION

BY MR. VON SCHUCH:

Q Good afternoon, Dr. Kay.

[240] A How are you?

Q Could you give the ladies and gentlemen of the Jury your name, please?

A My name is Deborah Kay.

Q Dr. Kay, would you tell us what you are employed as, please?

A I'm an Assistant Chief Medical Examiner for the Commonwealth of Virginia.

Q And as such, can you describe what you do, what your job is and exactly what you do?

A My job entails determining cause and manner of death in cases which may be of importance to the State. I do that by performing external and internal examinations, when they are required, on a deceased person, consulting with law enforcement, consulting with other

forensic experts, looking at other investigative reports and possibly medical records if they are so needed.

Q Dr. Kay, can you indicate to the Jury what educational background you have, please, first, and then –

MR. FORD: Judge, we'll stipulate that she's a qualified medical examiner. I don't have any problem with that. I'll offer the stipulation to the Commonwealth if he wishes to accept it.

MR. VON SCHUCH: Judge, I would appreciate it. I thank Mr. Ford for that. I would offer [241] her to the ladies and gentlemen of the Jury as an expert in the area of forensic pathology, a job description I believe she has just given to the Jury.

MR. FORD: No objection.

THE COURT: The Court certainly recognizes Dr. Kay as an expert.

BY MR. VON SCHUCH: (Continuing)

Q Dr. Kay, let me ask you, did you have occasion to be involved in the autopsy on the deceased in this case, Mary Elizabeth Keller?

A Yes, I did.

Q Let me ask you, did you have occasion to notice injuries to Mrs. Keller?

A Yes.

Q What specific injuries did you note?

A There were some scrapes on the knees. There was a bruise on the right leg and there were three gunshot wounds, all of which initially entered the face.

Q Did you have occasion to label each one of the wounds for reference?

A Yes. I numbered them just for reference. That does not reflect any particular order. I'm not able to determine the order in which they occurred. It's just [242] to keep track of them..

Q The gunshot wound that you have labeled as Gunshot Wound Number One, can you tell the ladies and gentlemen of the Jury the location of the entrance wound, please?

A Yes. That wound was at the edge of the left lower eyelid. That's where it entered.

Q And can you tell them the tract that the bullet took?

A Yes. It went through the left eyeball and then entered the head and passed into the brain matter.

Q Can you indicate the direction insofar as upwards, downwards, left to right or front to back?

A It went from front to back, from the deceased left to right, and upwards.

Q Can you indicate to the ladies and gentlemen of the Jury whether this wound, based on the damage that it had caused to the brain, would be a lethal wound in and of itself?

A Yes. This would be in and of itself. It could be a lethal wound.

Q Was there an exit wound to this Gunshot Wound Number One?

A No. I recovered a bullet in the brain material.

[243] Q Dr. Kay, I'm going to show you this item, if you would, please.

A Yes. There is a bullet in here and my bullet carved with my signature.

Q Was that the bullet that was recovered from Gunshot Wound Number One?

A Yes.

Q Let me ask you, was there any evidence of close-range firing with regards to this Gunshot Wound Number One?

A No. Not on the body, no.

Q Looking at the entrance of the gunshot wound – First of all, can you describe what a reentry is or a reentrance wound?

A A reentrance wound would be a wound that generally tends to be irregular. Wounds where a bullet has not hit or gone through some thing else before, generally tend to be round.

Q Based on the pathology of the entrance wound, can you tell the ladies and gentlemen of the Jury whether, in your opinion, it is possible that this could be a reentry wound?

A It's possible that it could be.

Q Can you indicate to the ladies and gentlemen of the Jury insofar as Gunshot Wound – Well, let me ask [244] you this. Did you have occasion to find any fibers of any sort in Gunshot Wound Number One?

A No, I did not.

Q Gunshot Wound Number Two, can you tell the ladies and gentlemen of the Jury the entrance location of Gunshot Wound Number Two?

A That's on the left cheek.

Q Can you give them the direction, the track that the bullet took and the direction that it took?

A Well, that went front to back, left to right, and upward.

Q Would it be approximately the same angle as Gunshot Wound Number One or is that an unfair question?

A I don't measure the angle, so I'm just giving general directions.

Q The damage that was caused by that wound?

A That bullet also entered the brain material and passed out of the head. There was an exit wound.

Q Where was the location of the exit wound?

A That's on the right side of the head, in the back.

Q I think you indicated in your report that the gunshot exit could be caused by a bullet or a bone fragment; is that correct?

A Well, there may have been a combination. I [245] did recover a small fragment in the brain itself, so there may be bone and bullet fragments exiting there.

Q Let me ask you this. Based on the damage that was caused by this wound, is this a wound that would be lethal in and of itself?

A Yes, this could also be lethal.

Q Did you have occasion to recover – You indicated that there was an exit wound; is that correct?

A Yes.

Q Did you nevertheless have occasion to recover a bullet or fragments of a bullet in that track?

A A fragment.

Q A fragment?

A Uh-huh (yes).

Q Let me show you 18-D.

A Yes. There are fragments here and this has the autopsy number, her name and my signature on it.

Q And this is where the bullet recovered from Gunshot Wound Number One, that track, has marked – do you see an 18-A on it?

A Yes.

Q These fragments from Gunshot Wound Number Two are marked with what is labeled 18-D; is that correct?

A That's right. That's not my labeling, that's someone else's.

[246] Q But that is marked on the package that way?

A Uh-huh (yes).

Q Now, did you have occasion to recover a bullet, as well, from the body bag that Mrs. Keller came in?

A There was a bullet recovered from that body bag, yes.

Q I'm going to show you an item marked on the package as 18-C and ask you if that appears to be the bullet recovered from the body bag of the deceased in this case, Mary Elizabeth Keller?

A Yes.

Q Now, insofar as Gunshot Wound Number Two was concerned, did you have occasion to find fibers in the track of Gunshot Wound Number Two?

A There were some fibers in there, yes.

Q Gunshot Wound Number Three, can you indicate to the ladies and gentlemen of the Jury the location of the entrance of Gunshot Wound Number Three?

A That was also on the left cheek.

Q Can you give them some idea of the tract that the bullet took?

A Yes. That broke the left side of the jaw, went into the neck, involved what we call the thyroid cartilage, that's part of the voice box, grazed the [247] esophagus, went into the right lung and exited the chest cavity.

Q Now, if I understand what you're saying, is the track of this bullet somewhat different than the first, than Gunshot One and Gunshot Two?

A Yes.

Q You indicated that there was an exit wound to Gunshot Wound Number Three; is that correct?

A Yes, there is an exit.

Q And where would that be?

A The exit was in the back.

Q Now, however, did you have occasion to recover a bullet or jacket or some other item in that track?

A I recovered a bullet jacket in the soft tissues of the back.

Q I'm going to show you this item and ask if you can identify that.

A That's a bullet jacket and it has my signature on the bullet card.

Q Now, that has a special marking on it, too; is that correct?

A Yes.

Q And what is that?

A I believe you are referring to the 18-B.

[248] A Yes, 18-B. Again, let me offer them at this time. The exhibit marked 18-A you have identified as coming from Gunshot Wound Number One; is that correct?

A Yes.

MR. VON SCHUCH: Judge, what exhibit number would this be?

THE COURT: This would be *Exhibit Number Twenty-Eight.*

MR. VON SCHUCH: I would offer that as Number Twenty-Eight at this time.

BY MR. VON SCHUCH: (Continuing)

Q Gunshot Wound Number Three had an exit, yet you recovered a jacket. Did the track split, that the jacket was over here and yet there was an exit in the back?

A Well, the jacket was in the soft tissues of the back. The exit was also in the back.

MR. VON SCHUCH: This item, Judge, that has the marking 18-B on it and was recovered from Gunshot Wound Number Three, I would offer as *Commonwealth's Exhibit Number Twenty-Nine.*

THE COURT: So entered.

MR. VON SCHUCH: This gunshot wound that was identified by the doctor as having the marking 18-D. and I believe she indicated it was [249] recovered from Gunshot Wound Number Two.

THE COURT: *Thirty.*

MR. VON SCHUCH: 18-C, which was found in the body bag, I would offer as *Number Thirty-One.*

BY MR. VON SCHUCH: (Continuing)

Q Let me ask you at this time. You have indicated, I believe, that you found fibers in the track of Gunshot Wound Number Two; is that correct?

A Yes.

Q Did you have occasion to find fibers also in the track of Gunshot Wound Number Three?

A Yes, there were some.

Q Did you have occasion to take what is known as a PERK kit on the deceased, Mary Elizabeth Keller?

A I obtained vaginal and anal swabs, pubic hair and head hair.

Q And what did you do with those? Was blood also taken at this time?

A Yes.

Q What was done with the PERK kit, or the physical evidence that you recovered from her?

A Those were turned over to Special Agent Hipkins.

Q The clothing that Mrs. Keller wore, what was [250] done with that clothing that she was wearing at the time she came in?

A That also went to Special Agent Hipkins.

Q The bullets and fragments that we have offered into evidence, who took possession of those?

A Special Agent Hipkins.

Q Now, as part of your duties, do you put together what is known as an autopsy report?

A Yes.

Q Let me ask you this. Do you have a copy of the autopsy report concerning the deceased in this case, Mary Elizabeth Keller?

A Yes, I do.

MR. VON SCHUCH: Judge, I would offer that at this time as *Commonwealth's Exhibit Number Thirty-Two.*

BY MR. VON SCHUCH: (Continuing)

Q Let me ask you again. Did you have occasion to state in the report the cause of death, for the record, of Mary Elizabeth Keller?

A Yes,

Q And that was?

A Gunshot wounds of the face.

Q Were you present when the autopsy was [251] performed on the deceased in this case, Morris Keller?

A Yes.

Q Would you tell the ladies and gentlemen of the Jury the injuries that you noted to Mr. Morris Keller?

A There was an abrasion on the left shoulder, actually several abrasions on the left shoulder; some on the back; abrasions on the forearm; and there were five gunshot wounds.

Q Did you have occasion again to label the different gunshot wounds, not by the order in which they were inflicted; is that correct?

A They are labeled, but there is no order.

Q Gunshot Wound Number One to Mr. Keller, can you indicate to the ladies and gentlemen of the Jury where that was located, please?

A The entrance is on the left side of the head.

Q And can you indicate, are you familiar with the term "stippling"?

A Yes.

Q What is that?

A That refers to marks left by burns and unburned gunpowder on the face or an item of clothing. I shouldn't say just face; on the skin or item of clothing.

Q Did you have occasion to find stippling [252] around this Gunshot Wound Number One to Mr. Keller?

A There is stippling on that side of the face, yes.

Q And what does that indicate in terms of pathology?

A We use it as a pathologic term. That indicates what we call an intermediate range gunshot wound. When we see stippling, we use that term. It means that more or less the gun was fired at close range.

Q Was this the only gunshot wound that he had to the left side of his face or his head?

A The entrances of the other gunshot wounds are on the right. Well, there are two on the right side of the face.

Q Can you indicate to the ladies and gentlemen of the Jury the track that this bullet took, please?

A This one went left to right, front to back, and upward.

Q Did it enter the brain?

A Yes, it did.

Q Would this be described by you as a wound lethal in and of itself?

A It certainly could be.

Q Now, can you indicate to the ladies and gentlemen of the Jury, was there an exit wound associated [253] with Gunshot Wound Number One?

A Yes. There was an exit on the right side of the head.

Q Did you have occasion to find some minute fragments in that gunshot wound?

A These fragments were recovered by Dr. Boone, and that's her signature on there.

Q There was no bullet or anything larger than those fragments recovered from Gunshot Wound Number One; is that correct?

A There was nothing. Actually, there were bullet fragments recovered from the brain material and they were associated with Gunshot Wounds Number, what we've labeled Number One and Number Two. We're not able to say precisely which ones those came from.

MR. VON SCHUCH: Judge, I would offer this as Commonwealth's, I believe it's Thirty-Three.

THE COURT: *Thirty-Three.*

BY MR. VON SCHUCH: (Continuing)

Q The next wound would be Gunshot Wound Number Two; is that correct?

A Yes.

Q And where did Gunshot Wound Number Two enter?

[254] A That was on the right side of the head.

Q Can you give the ladies and gentlemen of the Jury an indication of the location?

A Entrance Number Two is on the right side of the head behind the ear.

Q Can you describe the track of the bullet?

A That bullet also passed through the brain.

Q Was there an exit wound associated with that gunshot wound, as there was with Number One?

A Yes. The exit was on the left side of the head.

Q Again, were any bullets or fragments associated with Gunshot Wound Number Two recovered?

A Just what we talked about.

Q Was there any evidence of a close-range firing insofar as Gunshot Wound Number Two is concerned?

A No.

Q Was there any stippling around Gunshot Wound Number Two?

A No, there wasn't.

Q Can you give the ladies and gentlemen of the Jury the location of Gunshot Wound Number Three, which I believe was the third shot to the head?

A Number Three is on the right side of the head and that's in front of the ear.

[255] Q Can you describe the track that Gunshot Number Three took?

A That bullet went right to left and went through the facial bones.

Q If you could, using your own head, can you describe the entrance and exit of this particular gunshot wound?

A Well, the entrance is about here, the exit on the other side about here.

Q Did that pass through the brain?

A It did not.

Q What would you say about the lethal effect of that wound not entering the brain?

A Sometimes bullets can pass through the face and cause enough injury to the base of the skull and the brain to be fatal, so it's possible that it was. Since we had other wounds, you really cannot evaluate what individual damage that bullet would have done to the skull or the brain.

Q If it was the first wound inflicted and the only one inflicted, would you call it a potentially lethal wound in and of itself or not?

A Well, if it's the only wound inflicted, you would just have to judge that by the outcome.

Q Would it be fair to say that it contributed [256] to the death of Morris Keller in this case?

A Yes.

Q Again, was there an exit wound associated with Gunshot Wound Number Three?

A Yes, there was an exit wound.

Q If this was the first gunshot wound inflicted to the deceased, would it be possible for him to exercise, even after the infliction of this wound, some movement prior to the other wounds being inflicted?

A That might be possible.

Q I believe the next wound would be Gunshot Wound Number Four; is that correct?

A Yes.

Q Can you give the ladies and gentlemen of the Jury the location of that wound, please?

A There's a wound on the thigh, right thigh.

Q Was this a through and through entrance/exit?

A Yes, it was.

Q Let me ask you this. In determining entrance and exit as to that gunshot wound, did you use the aid of the residue powders on the clothes?

A At the time the autopsy was performed, no.

Q Subsequently?

A Subsequently, we did have the knowledge of [257] the residue on the clothing, which indicate that instead of coming from – that we may have reversed the entrance and exit there. We cannot determine that for certain.

Q No bullet was recovered from this, correct?

A No.

Q The track of the wound did or did not strike any bone or anything else of that nature; strictly soft tissue?

A Soft tissue, that's it.

Q The same thing, Gunshot Wound Number Five, was that also to the right leg?

A Yes, right lower leg.

Q Going back to Gunshot Wound Number Four, the track or the angle of that wound through the leg, can you describe that, please? Did you measure the inches up from the knee or down from the knee for each of the entrance and exit wounds?

A Well, the defect on the right posterior thigh is twenty-four and three-quarter inches from the ankle. The other hole, right posterior thigh, is twenty-six inches from the ankle.

Q Again, this was through and through soft tissue, struck no bone?

A Yes, correct.

Q Now, did you have occasion to determine the [258] cause of death, for the record, of Morris Keller?

A Yes. Gunshot wounds of head and right leg.

Q Was gunshot wound included in the evaluation as contributing to the cause of death?

A I feel that any gunshot wound, even if it might not be lethal, in and of itself is contributory.

Q Dr. Kay, insofar as Mr. Keller is concerned – You have described what you have done insofar as collecting a PERK kit from Mrs. Keller. Did you do the same thing, indicate whether or not blood, hair samples and other items were collected from Morris Keller?

A Dr. Boone made those collections.

Q All right, and are they so listed in the autopsy report?

A Yes.

Q Do you have a copy of the autopsy report of the deceased in this case, Mr. Morris Keller?

A Yes, I do.

MR. VON SCHUCH: Judge, I would offer that at this time as a Commonwealth's Exhibit.

THE COURT: *Thirty-Four.*

BY MR. VON SCHUCH: (Continuing)

Q Dr. Kay, I am going to show you this diagram which I have drawn and I want you, or can you, if you [259] would, please, does this correctly indicate the entrance wound of Gunshot Number One?

A Yes.

Q Approximately?

A Approximately, yes.

A I understand there are no measurements to it, but does that approximately indicate it?

A Yes.

Q If it please the Court, the exhibit number of the bullet recovered from there was Twenty-Eight; is that correct? That would be 18-A marked on the – 18-A would be Exhibit Twenty-Eight. Now, is that the approximate – and again, not measured per se – but the approximate location of Gunshot Wound Number Three?

A Yes.

Q And I believe you indicated that the exhibit that was 18-B and is now Commonwealth's Exhibit Number Twenty-Nine was recovered from the track of Gunshot Wound Number Three; is that correct?

A Yes.

Q That would be Number Twenty-Nine. Is that the approximate location of Gunshot Wound Number Two?

A Yes,

Q And I believe you indicated that 18-D was recovered from the track of Gunshot Wound Number Two; is [260] that correct?

A Yes.

Q And that is now Commonwealth's Exhibit number Thirty. 18-C noted on the chart here at this time has simply been identified as coming from the body bag; is that correct?

A That's right.

Q And that would be Commonwealth's Exhibit Number Thirty-One. Does that chart accurately, at this point, identify then the entrance wounds and the bullets recovered from each one of the tracks as they are marked?

A I believe it does.

MR. VON SCHUCH: Judge, at this time I would offer this for identification purposes only, until Ms. Jones testifies, as Commonwealth's Exhibit, I believe this would be Thirty-Four.

THE COURT: Thirty-Four, identification only.

THE CLERK: Thirty-Five.

THE COURT: *Thirty-Five*; I'm sorry.

MR. VON SCHUCH: Dr. Kay, as the Judge is marking that, that's all the questions I have. Would you please answer any questions that Mr. Ford has?

[261] CROSS EXAMINATION

BY MR. FORD:

Q Dr. Kay, good afternoon.

A Hi.

Q You indicated on both bodies that there were scrapes on various parts of the bodies.

A Yes.

Q Would that be indicative of a beating that was received or would that be indicative of more scrapes from possibly going through the woods, or can you tell?

A I really can't say.

Q You can't say. Was there any bruising or –

A This does not seem to be like a beating, but I, you know, cannot be certain.

Q Calling your attention to the examination of Mrs. Keller –

A Okay.

Q – you said that Shot Number One was a lethal wound; is that correct?

A Correct.

Q And Shot Number Two was a lethal wound, was it?

A Yes.

Q I don't know if I just missed it or whether [262] you didn't say, was Shot Number Three a lethal wound?

A Yes, most certainly. All of those wounds could have caused death.

Q In and of themselves?

A In and of themselves, each individually.

Q Now, calling your attention to Mr. Keller's wounds –

A Okay.

Q – and Mr. Von Schuch asked you with particularity to Shot Number Three, which passed through the face, basically?

A Yes.

Q And you indicated to him that that was a contributing factor to the death; is that right?

A It's contributing and on occasion in and of itself that type of wound can be lethal, but you cannot evaluate that because you have two other wounds that actually went into the head.

Q Okay. So my question to you, the first two, Shot Number One and Shot Number Two, were most definitely lethal wounds; is that correct?

A They are certainly potentially lethal, yes.

Q And Shot Number Three may have been lethal, but you cannot tell, in and of itself?

A That's correct.

[263] MR. FORD: That's all the questions I have.

REDIRECT EXAMINATION

BY MR. VON SCHUCH:

Q Let me just ask you, the Gunshot Wound Number Three, does the amount of fracture associated with that affect how lethal a wound it would be?

A Well, there are fractures in the facial bones that would generally, I should think, not cause a lethal problem unless there were complications down the road from

that. How much of the skull was fractured by that bullet alone is impossible to say and, as I mentioned, I have seen bullets that go through the face that fracture the base of the skull and also cause injuries to the brain without those other two.

Q If more fracture is associated with – in other words, the greater the fracture, is that –

A You can't judge it simply on a fracture.

Q You can't do that?

A No. You can't judge it on a fracture alone, and there are three wounds to the head, so you have to take them all together.

Q And in your opinion, they all three contributed?

A The first two are more serious in the sense [264] that I could see that they passed into the brain, so that those two are definitely potentially lethal. The third one did not, but I cannot separate the effects of that bullet versus the other two.

MR. VON SCHUCH: Thank you, Dr. Kay. Judge, that's all the questions that I have.

THE COURT: Dr. Kay, you may be excused.

* * *

VIRGINIA:

IN THE CIRCUIT COURT FOR THE
COUNTY OF CUMBERLAND

COMMONWEALTH OF VIRGINIA

v.

MICHAEL WAYNE WILLIAMS

THE HONORABLE JOHN R. SNODDY, JR., PRESIDING

TRIAL – DAY THREE

Cumberland, Virginia
January 5, 1994

* * *

[54] The witness, LISA C. SCHIERMEIER, having first been duly sworn, was examined and testified on her oath as follows:

DIRECT EXAMINATION

BY MR. VON SCHUCH:

Q Would you give the ladies and gentlemen, of [55] the Jury your name, please?

A My name is Lisa C. Schiermeier, spelled S-c-h-i-e-r-m-e-i-e-r.

Q Can you tell the ladies and gentlemen of the Jury whether or not you are employed?

A I'm employed with the Virginia Division of Forensic Science, which is the crime laboratory system for the State of Virginia.

Q What is your specific job? Can you give us some detail about your job description and what you do, please?

A As a forensic scientist, I specialize in the field of serology, and serology deals with the study of blood and body fluids. And, therefore, it's my responsibility to identify these blood and body fluids, as well as to analyze them and draw conclusions based on my analysis.

Q Can you give the ladies and gentlemen of the Jury some idea of your educational background and then your job experience in this field?

A I hold a Master's of Science Degree in Forensic Science from Virginia Commonwealth university in Richmond, Virginia. I also hold a Bachelor of Science Degree in Medical Technology from the Medical School at U.N.C., Chapel Hill. I have also had eighteen months of [56] intense training in the area of serology during that time.

MR. FORD: Judge, we will stipulate to her qualifications.

MR. VON SCHUCH: Judge, I would offer her as an expert in the area of serology at this time.

THE COURT: She is an expert.

BY MR. VON SCHUCH: (Continuing)

Q Ms. Schiermeier, can you tell the ladies and gentlemen of the Jury what we are talking about when we are talking about a person's blood type?

A When we speak of a person's blood type, you may be familiar with the A-B-O blood typing system, which is involved when you donate blood. The particular A-B-O system divides the population into four separate types, Type A, Type B, Type O, and Type AB. Now, similar to that system there are other systems that are inherited. You have them throughout your entire life and those systems are found in your blood and body fluids, specifically vaginal fluid and seminal fluid.

Q What are enzyme systems and how do they relate to the fluids that you've described for the Jury?

A Okay. When I mentioned we have other systems, these systems are based on enzymes in everybody's body. Everybody has these enzymes. It's just the form of [57] the enzyme, or what I will refer to as the type of the enzyme, is different in different people, and these types are inherited from your parents. You have them at birth. You will maintain those same types throughout your life and you will have them at your death.

Q Are these blood types and enzyme types secreted in your bodily fluids, such as saliva, such as seminal fluid?

A They are secreted into the blood. They are secreted into the vaginal fluid, as well as into the seminal fluid.

Q How do you identify blood types or enzyme types in fluids?

A I have some sophisticated techniques which I use within the laboratory. These techniques are common to not only the forensic laboratory, but they are also techniques that are used within a hospital laboratory. And based on these techniques and using the particular samples that I have, whether it be samples of blood, samples that I have identified seminal fluid on, I use those samples. I test those samples and then I come to a conclusion as to what the types are of that particular sample and then I compare those types to the known types of the individuals which were submitted to me.

Q Did you have occasion to have submitted to [58] you a physical evidence, or a PERK Kit, from Morris Keller and Mary Elizabeth Keller from Agent Joe Adcock?

A Yes. I received a Physical Evidence Recovery Kit, or PERK as an abbreviation. I received them from, one submitted to me as coming from Morris Keller, as well as one submitted to me as coming from Mary Keller. Those were submitted to me by Special Agent Adcock on March 5th of 1993.

Q Did you have occasion, as well, to receive the same type of substances, PERK Kits and so forth, from Jeffrey Cruse and Michael Williams, and I believe they would have been delivered by Officer Meinhard?

A Yes. I did receive samples from Mr. Cruse and Mr. Williams. I received those on the 17th of March of 1993.

Q Did you have occasion to type all of the items that you recovered in the PERK Kits?

A Yes. After I identified which particular fluids I was dealing with, I then attempted to type them, as I

explained to you earlier, and then I compared the types that my tests showed me to the known types of the individuals.

Q Did you have occasion to chart that?

A Yes. I prepared a chart in my report, which I released on this case, and I did also bring an overhead [59] form of the chart with me to court today.

Q What I would like to do is try and use the overhead so that the ladies and gentlemen of the Jury can clearly see what you have done, which means we need –

THE COURT: Need what?

MR. VON SCHUCH: The State Trooper who is going to help me set up the screen.

BY MR. VON SCHUCH: (Continuing)

Q While we are waiting on him, let me ask you this, Ms. Schiermeier. You indicated that you had occasion to make a lab report and chart your analysis; is that correct?

A Yes.

Q Do you have a copy of that with you?

A Yes. I have a copy of my three page report.

MR. VON SCHUCH: Judge, I would offer that at this time as a Commonwealth's exhibit.

THE COURT: Do you have two copies? We can't take your only copy.

THE WITNESS: I only have a copy for myself.

BY MR. VON SCHUCH: (Continuing)

Q Why don't you take a look at that? Let me see if that –

[60] A Okay. This appears to be a copy of the report that I issued in this case. A couple of the pages have been duplicated here, but it does bear my signature on the final page.

MR. VON SCHUCH: I would offer that.

THE COURT: Any objection?

MR. FORD: No objection, Judge.

THE COURT: That's *Commonwealth's Exhibit Forty-Two.*

BY MR. VON SCHUCH: (Continuing)

Q Can you tell the ladies and gentlemen of the Jury what you have done here? As I see, I see no blood types across there. Can you explain to them what the PGM, PGM subtype, and PepA are, please?

A Okay. This is a copy of the table which is in my report. Across the top "Table of Typing Results" of the evidence that I typed in this particular case. Underneath the "Item", which I have yet to uncover, will describe what the item was, what the item number was. And then the PGM, PGM subtype, and PepA, those are the system that I typed these particular samples in. PGM is an abbreviation for a long chemical name, phosphoglucomutase. We call it PGM for short. The PGM subtype is a subtype or a subset of the PGM. So the subtype is just a further [61] breakdown of the PGM type. And then lastly, PepA stands for peptidase A. Again, we use the abbreviation,

and it is another system in which I can type blood and body fluid samples in.

Now, these systems are inherited independently, and what I mean by that is that just because you are a particular type in one system does not predetermine what type you are in another system. So we use these systems to help describe or create a profile of the particular sample. For instance, if you were talking about a car, you might say it's a green car, it's a four-door, it's a Chevrolet. Well, with my particular typing system, I say that the particular sample is a PGM type whatever, subtype whatever, PepA type whatever, and those are descriptions as to what the sample is.

Q Did you have occasion to capture these systems from Morris Keller?

A Yes. On the known blood sample that was submitted to me from Morris Keller, the types I identified were PGM type 2-1, PGM subtype – Remember, I said subtype is just a breakdown of the PGM system – the subtype being a 2+1+, and the PepA type 1. Now, the numbers are what we use to describe what the type is. Where the A-B-O system used letters, these systems use numbers and plus and minus signs.

[62] Q Did you have occasion to do the same from the blood of Mary Elizabeth Keller?

A Yes. I also received a blood sample from Mary Keller and determined that the types were PGM type 2-1, subtype 2+1+, PepA type 1. Now, in looking at these two individuals, Mr. Keller and Mrs. Keller, you can see

across that they do have the same types in the systems that I typed across.

Q And who did you type next, please?

A The next sample I have listed, I got a blood sample from Mr. Cruse, and the types, you can see, are PGM type 2-1, subtype 2+1-, PepA type 1. And you can see by looking across there that there is a difference in types in this PGM subtyping system. Mr. Cruse is a 2+1-, whereas both of the Kellers are 2+1+, and, therefore, I can distinguish Mr. Cruse from Mr. and Mrs. Keller.

Q Did you have occasion to type the defendant in this case, Michael Williams?

A Yes. I received a blood sample from Mr. Williams. The types you see are the PGM type 2-1, subtype 2-1+, PepA type 1. Now, in looking at all the four individuals involved, they all have the same PGM type, they all have the same PepA type, but this PGM subtyping system I can use to distinguish between the individuals in the case.

[63] Q In this case, Michael Williams has a different PGM subtype than any of the other three?

A That is correct.

Q Did you have occasion to analyze the vaginal swabs taken by the medical examiner from the vaginal vault of Mary Elizabeth Keller?

A Yes. I examined the vaginal swabs and the vaginal smear from Mrs. Keller, and on those I identified spermatozoa, which is the male reproductive cell.

Q Did you have occasion to type the fluids that you found on those vaginal swabs?

A Yes. Because I did identify spermatozoa, that also means that there was seminal fluid present, because seminal fluid is made up of a fluid portion and a sperm portion. And in these systems that I test for, to get very technical, I am testing that fluid portion on the vaginal swabs. Now, the vaginal swabs, being that they were taken from the vaginal area, I can expect for there to be vaginal fluid from Mrs. Keller there, just because of where those swabs were taken from. I also identified spermatozoa, which means that those swabs are a mixture of vaginal fluid and seminal fluid. And you can see that the types I determined were PGM type 2-1, subtype 2+2-1+, and PepA type 1. Now, this 2+2-1+ is the mixture. And when I compare these types back to the known individuals in the [64] case, the first thing I do is I look for something, I look for a type foreign to Mrs. Keller, because, remember, we said that there is vaginal fluid there. So in comparing this back to Mrs. Keller, the 2- is foreign. Mrs. Keller is a 2+1+. She is not capable of producing a 2-. So in looking at the individuals, from whom I have blood samples for, this 2- could have come from Mr. Williams. This 2- could not have come from Mr. Cruse. It could not have come from Mr. Keller. Therefore, my conclusion would be that if there was one donor of the seminal fluid, what I refer to in my report as a sole donor of the seminal fluid, Mr. Williams cannot be eliminated. However, if there were more than one donor of that seminal fluid, we've already said Mr. Williams cannot eliminated, but if there was more than one donor, Mr. Cruse and Mr. Keller could not be eliminated.

Q Between those four people, the only one up there that has a 2- is who?

A Mr. Williams.

Q The vaginal swabs captured 2-. Between those four people, the only one up there who could have deposited that 2- in the vaginal vault of Mary Elizabeth Keller would have been who?

A Mr. Williams.

Q Let me ask you, Ms. Schiermeier, what you [65] are capturing is from fluids; is that correct?

A That's correct.

Q When DNA testing is done, are they examining the same things or the same substances or same materials you are, or are they examining different materials?

A DNA is examining cells. And remember I said that spermatozoa is the male reproductive cell. While technically we both tested the seminal fluid, I tested the fluid portion of the seminal fluid and DNA tests the sperm section of the seminal fluid. So there are those two. There is that distinguishing factor in there that I tested the fluid portion; DNA tested the sperm or the cellular portion.

Q The items that you had occasion to examine to obtain these results, what did you do with them after you completed your analysis of the materials you specifically were looking at?

A After I completed my analysis of these particular items, I then forwarded them to our DNA section for further analysis.

Q Just briefly, what is DNA testing, because we've used that term and I'm not sure whether the Jury understands it?

A DNA testing is a more – if I may back up. DNA is more specific. When I do my serology testing, it [66] breaks down the population into categories. Some systems may have three categories, some systems may have ten categories, but DNA testing divides the population into many, many different types. So it is a much more discriminative process than just the serology work that I did.

MR. VON SCHUCH: I'm going to leave that up, because I don't know whether Mr. Ford has any questions pursuant to it. Do you need the chart for the Jury?

MR. FORD: No.

MR. VON SCHUCH: Judge, at this time I would offer the creation of the overhead into evidence as a Commonwealth's exhibit. I think at this time she can resume her chair and Mr. Ford can cross examine her.

MR. FORD: Isn't that the same as the report?

MR. VON SCHUCH: It is. Do you have any objection to that not being admitted?

MR. FORD: No. That's fine.

THE COURT: You had this in your report?

THE WITNESS: That is the same chart that is in my report.

[67] CROSS EXAMINATION

BY MR. FORD:

Q Ms. Schiermeier, you mentioned about DNA –

A Uh-huh.

Q – and that you had sent the tests or you had sent the specimens on for DNA testing?

A Right.

Q Is DNA testing a more exact science than yours is? I mean, can DNA typify somebody a lot closer than you can?

A Generally speaking, yes, but I am not an expert in DNA.

Q I understand that. But when you give us your report, you mention donors. So what you are saying is that Mr. Williams has a type that is common to several hundreds of thousands of people, I would guess, or quite a few people?

A That type that I determined on the overhead, I believe it was a 2-1+, that is common to a portion of the population, and if you prefer I could dig out the statistics.

Q No, I don't need the statistics.

A Okay.

Q There's just a lot of people that have that?

[68] A There are people, other people, yes, that do have that same type.

Q And DNA is a more exact science in that if it can determine so, it can determine whether someone is a

contributor down to an infinitesimal amount; isn't that correct?

A It is possible, but, again, I am not a DNA expert.

MR. FORD: Thank you, that's all I have.

THE COURT: May this lady be excused?

MR. VON SCHUCH: Yes, sir. She may be excused.

THE COURT: You may be excused. Thank you.

MR. FORD: Judge, one more quick question.

THE COURT: All right.

BY MR. FORD: (Continuing)

Q Would contaminants play any part in your evaluation? If a body was left out over a certain period of time, would that affect your findings?

A What is possible in that particular situation is that I would not get a result. I determined that the type of the vaginal swabs were the 2+2-1+. If that were a problem, I would not determine a type. It would affect the test so that I would not see a result and [69] I would call it inconclusive, and there is no other way for it to change a result or anything like that. I would not get a result.

MR. FORD: No further questions.

THE COURT: Thank you. You may be excused.

* * *

VIRGINIA:

IN THE CIRCUIT COURT FOR THE
COUNTY OF CUMBERLAND

[Caption Omitted In Printing]

* * *

[77] The witness, GEORGE C. LI having first been duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

BY MR. VON SCHUCH:

Q Would you give the ladies and gentlemen of the Jury your name, please?

A My name is George Li.

Q And, Mr. Li, let me ask you this, are you employed, sir?

A Yes, sir.

Q Where and in what capacity?

A I'm employed at the Virginia Division of Forensic Science, commonly known as the crime lab. I'm employed as a forensic scientist supervisor. My duties involve supervision of serologists and DNA analysts who analyze criminal casework in the Richmond laboratory, as well as I myself do conduct DNA analysis on casework as well.

Q Can you give the ladies and gentlemen of the Jury your educational experience?

MR. FORD: We'll stipulate to his qualifications as a DNA expert.

THE COURT: You stipulate that he is an expert in that field. The Court so rules.

[78] BY MR. VON SCHUCH: (Continuing)

Q Mr. Li, can you indicate to the ladies and gentlemen of the Jury what DNA PCR testing is, please?

A DNA PCR testing is, again, a technique that utilizes the fact that people are different in their DNA. PCR actually stands for Preliminary Chain Reaction. It is a technique that, in essence, multiply the difference that is in our DNA to an extent that we can see it as a color reaction. It's a series of dots that indicates to me the difference between people, and using that I make a comparison to try to associate evidence to known samples or make a differentiation to tell things apart.

Q Did you have occasion to receive from Bob Scanlon, after he'd finished the RFLP testing on the items, the PERK kit from Morris Keller and Mary Elizabeth Keller?

A I received cuttings and known samples from Bob Scanlon.

Q Did you have occasion to receive the same thing concerning Jeffrey Cruse and the defendant in this case, Michael Wayne Williams?

A Yes, I did.

Q Did you have occasion to receive the vaginal swabs or the material extracted from the vaginal swabs of Mary Elizabeth Keller?

A Yes, I did.

[79] Q Now, did you have occasion to conduct at that time an amplified PCR DNA testing on all those materials?

A Yes. That's the test that I conducted on those evidence that was mentioned.

Q Did you get some results as a result of the tests that you ran?

A Yes, I did. I received results.

Q Can you explain to the ladies and gentlemen of the Jury or demonstrate for them exactly what you received, please? Would you like to use the overhead at this point?

A Yes, please.

THE COURT: The Court is going to move over and you may move over there.

MR. FORD: Thank you, Judge.

THE WITNESS: Your question was the technique?

BY MR. VON SCHUCH: (Continuing)

Q Yes. What I want you to do is to explain the results that you got from the testing on each one of these samples and the conclusions that you drew as a result of that.

A I conducted a DNA PCR testing on the [80] evidence, which is the known blood sample of Morris Keller, Mary Keller, Jeffrey Cruse, Michael Williams, and the

vaginal/cervical swab, which is actually one swab of the vaginal/cervical area of the victim.

Q Could you keep your voice up so that the ladies and gentlemen in the back row can hear?

A Okay. I conducted the PCR test and the results are shown as series of dots on a strip. The strip is actually a piece of nylon strip. The results were indicated by blue dots on this piece of nylon strip. This is what a blank strip would look like with a series of blanks, and the result would be indicated by blue dots on these. The location of the blue dots would tell me what type the person is, or the piece of evidence is indicating. In a sense somewhat similar to the A-B-O blood type, there is Type A, Type B, Type AB, and Type O, so for the A-B-O system there is four types. For this PCR testing there are twenty-one types, the types indicated by numbers. The choice of the numbers are 1.1, 1.2, 1.3, 2, 3, 4. A person's type is indicated by two of these six numbers.

My PCR type happens to be 3, 4. So George Li's PCR type is 3, 4. That is my PCR type. Another person's type could be 1.1, 1.2 or whatever that person's type happens to be, but it is indicated by these two numbers, that person's type. And the dots, depending which [81] one is lit up or is colored, will tell me what type that person is. In this particular case, Morris Keller's type is as follows. I'll give you the type of each of the individuals that I conducted a test on.

Q Yes, Mr. Li.

A There's four different individual's known samples that I tested. The type was actually 1.2, 3, is Morris

Keller's type. The dots actually looks like this as they are lit up.

Q Could you center that, please?

A So this is Mr. Keller's type, 1.2, 3, these dots that lit up, as we call it, they light up. And Mary Keller's type, her type is 1.1, 2. Now, to use as an example, I can tell these people apart because their types are different. From the fact that the dots light up differently, I can tell these people apart. If they happen to have the same type, I would not be able to tell them apart. If they happen to have the same type and the same dots light up, then I can't tell Morris Keller's blood from Mary Keller's blood or other body fluids. This technique works on blood and, in theory, any part of the human body that contains the nucleus, because the DNA is inside the nucleus, any part. Muscles would work; skin. Well, skin probably won't because it's a lot of dead cells. But brain cells would work with this technique, a small quantity, [82] too. This PCR test is extremely sensitive. It needs a very small quantity of sample to produce a result. It is extremely sensitive compared to the RFLP test and also to an enzyme typing, too. Now, that's Mary Keller's type and Morris Keller's type.

Q Mr. Li, when you refer to these lights, or these circles lighting up, when you watch the board with the test results, is that when these circles are shown?

A At the end of the test this is what I see as the final step of developing the results, if you will, to tell me what type the person is or the stain, which the vaginal/cervical swab would show a series of dots as well. After I have all

the known samples and the evidence, I make a comparison of the evidence to that of the known individuals. Mr. Cruse's type is 1.1, 4 and Mr. Williams' type is 1.2, 4. Now, in this particular case all four individuals in this case are different, show a different type. In this instance, I can tell them all apart. In other cases it may be just by chance, because there is only a choice of twenty-one different types. It is possible that people share the same PCR type and in those instances I won't be able to tell people apart. But in this case every individual has a different PCR type and I can differentiate all four of them to an extent.

Now, this is what I got from the vaginal, [83] the type that I have and the dots that's lit up are as follows. The dots that lit up is these and the type, if I was just reading the dots on its own merit, these are the dots that light up and they would mean to me a type of 1.1, 4. This is what the type would indicate to me, if I knew nothing else about the case in question. Now, this result is different from that, 1.1, 4 is different from that of Mr. Keller and Mary Keller. So the sperm that is present there is not from Mr. Keller, because he being her husband, we need his known type to make sure that the sperm there isn't his or if it was, and I want to make sure we can tell that, whether it is or not. But it is not from Mr. Keller. That settled that one question. The other question would be the other individuals in question, Mr. Cruse and Mr. Williams. If this came from only one sperm source, meaning only one person ejaculated and the sperm came from only one individual, then this type could only have come from Mr. Cruse and not Mr. Williams, if the sperm only came from one source, one individual, because this type

is different. Mr. Williams' type is different from this, if there was only one sperm source.

But if the question was if there was more than one donor of semen, if this came from more than one individual, the sperm that is present here, these dots is consistent with the additional, these dots plus these dots [84] would still light up the same ones. These two together, these two are blank. This is blank and these two are blank. This is blank. These two light up. This one lights up. This one lit up, although Mr. Williams' was blank here, the dot would light up here. These two would both light up here and these last ones here. So if there was more than one donor of the semen, this is consistent with the – This stain could have been donated by two individuals that have these types together, will result in these series of dots.

Q When you talk about Mr. Cruse, is there anything about Mr. Cruse which would cover up the donation of Michael Williams in the final result?

A This result indicates a type of 1.1, 4. but I will not be able to tell you that this is here or not, because the presence of these dots would cover up the presence of this other individual if this person happens to by these types.

Q If the evidence, for the Jury were that both Jeffrey Cruse and Michael Williams jointly deposited seminal fluid, is this exactly the result you would get from that joint deposit?

A This result would be consistent with such a scenario.

Q That's all the questions I have. Mr. Li. do [85] you have a lab report?

A I generated a report of this particular case.

Q I'm going to ask you to take a look at this and see if you can identify that.

A Yes. This is a copy of the report that was generated in this particular case.

Q Let me ask you this. That auto-read that you have just produced there –

MR. VON SCHUCH: Judge, I would offer that at this time, because I think it very clearly explains the situation. I would offer that as a Commonwealth's exhibit at this time.

THE COURT: Exhibit Forty-Three.

MR. VON SCHUCH: Yes.

* * *

[86] CROSS EXAMINATION

BY MR. FORD:

Q Mr. Li, you can stay down there if you want to. I have just a couple of questions.

A Right.

Q I believe it's your testimony though that the specimen that you got is exactly consistent with J. Cruse; is that right?

A If it came from one semen donor, yes. It would be correct to say it is the same as a person that has this type,

but it so happens that Mr. Cruse is this type. That would be the correct way to say that.

Q So all this would be based upon whether the evidence showed that there were two or one individuals contributing to that; is that right?

A If this came from one individual –

Q Then Mr. Cruse –

A – then Mr. Cruse –

Q – is the man?

A If it's only one individual, then it did not come from this person.

MR. FORD: Thank you.

[87] MR. VON SCHUCH: Is that all you have?

MR. FORD: Yes.

MR. VON SCHUCH: Judge, I would offer this at this time, and if it's okay with Mr. Li, what we will do is during the break we will go ahead and provide him with the copy. We need to produce a copy that can be substituted for this.

THE COURT: Is that all right with you?

THE WITNESS: That will be fine, sir. Am I excused?

THE COURT: *Commonwealth's Exhibit Forty-Three.*

THE WITNESS: Am I excused, sir?

MR. VON SCHUCH: Judge, we have no further questions for Mr. Li.

THE COURT: You may excused, sir, and you may go.

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COMMONWEALTH'S EXHIBIT 42

Commonwealth of Virginia
Department of General Services
DIVISION OF FORENSIC SCIENCE

(LOGO)

CERTIFICATE OF ANALYSIS

April 30, 1993

ORIGINAL

Central Laboratory
P. O. Box 999
Richmond, Virginia 23208

Tel. No.: (804) 786-4707
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TO: ATTN J H ADCOCK
DEPARTMENT OF STATE POLICE
P O BOX 577
APPOMATTOX VA 24522

Your Case # 93-83-00-0103 FS Lab # CL93-2111

Victim(s): KELLER, Morris Clifford, Jr.
KELLER, Mary Elizabeth

Suspect(s): WILLIAMS, Michael Wayne
CRUSE, Jeffery Alan

Evidence Submitted By: J. H. Adcock & W. Hipkins
Date Received: 3-3-93

Item 9 – Leaf with stain
Item 20 – Clothing from Morris Keller
Item 21 – Clothing from Mary Keller

Evidence Submitted By: J. H. Adcock
Date Received: 3-5-93

Items 26 and 27 – Physical Evidence Recovery Kit from Morris Keller
Item 28 – Physical Evidence Recovery Kit from Mary Keller

Evidence Submitted By: Claude Meinhard
Date Received: 3-17-93

Item 41 – Blood, Saliva, and Hair Samples Kit from J. Cruse
Item 42 – Physical Evidence Recovery Kit (#2496) from M. Williams

RESULTS:

Item 9 – Chemical tests indicated the presence of blood on the leaf; however, no results were obtained in the test to determine human specie.

Items 20 and 21 – Per instructions from S/A Tyree on 3/15/93, no serological examinations were conducted on the clothing from Morris or Mary Keller. The clothing was forwarded for hair/fiber examination.

Items 26 and 27 – No spermatozoa were identified on the oral or anal smears from Morris Keller and no seminal fluid was detected on the corresponding swabs. Chemical tests indicated the presence of blood on the oral swabs. No hairs/fibers or apparent tissue was noted in either of the hand bags and the head hair exemplars were forwarded for comparison purposes. Chemical tests indicated the presence of blood, insufficient for further testing, in the right hand bag. No blood was noted in the left hand bag.

Refer to the Table for typing results on the blood sample from Morris Keller.

Item 28 – Spermatozoa were identified on the vaginal smears from Mary Keller. Refer to the Table for typing results on the corresponding swabs and the blood sample from Mary Keller. No spermatozoa were identified on the anal smear and no seminal fluid was detected on the corresponding swabs.

Item 41 – Refer to the Table for typing results on the blood sample from J. Cruse. The hair exemplars were forwarded for comparison purposes and the saliva swabs were not examined.

Item 42 – Refer to the Table for typing results on the blood sample from M. Williams. The hair exemplars were forwarded for comparison purposes. The saliva swabs and lips/lip area swabs and smear were not examined.

TABLE OF TYPING RESULTS

Item		PGM	PGM subtype	PepA
27	Morris Keller	2-1	2+1+	1
28	Mary Keller	2-1	2+1+	1
41	J. Cruse	2-1	2+1-	1
42	M. Williams	2-1	2-1+	1
28	Vaginal swabs from Mary Keller	2-1	2+2-1+	1

Commonwealth of Virginia
Department of General Services
DIVISION OF FORENSIC SCIENCE

(LOGO) ORIGINAL

CERTIFICATE OF ANALYSIS

DEPARTMENT OF STATE POLICE
Your Case # 93-83-00-0103
FS Lab # CL93-2111
April 30, 1993

CONCLUSIONS:

Based on the above results, M. Williams cannot be eliminated as the sole donor of the seminal fluid identified on the vaginal swabs from Mary Keller. However, if there was more than one donor, J. Cruse and Morris Keller cannot be eliminated as co-contributors to the stain.

The evidence will be available for pick-up after you have received the results of all requested examinations, which are contained in separate reports.

ATTEST:

I certify that I performed the above analysis or examination as an employee of the Division of Forensic Science and that the above is an accurate record of the results of that analysis or examination.

/s/ Lisa C. Schiermeier
Lisa C. Schiermeier
Forensic Scientist

1.1 1.2 1.3 2 3 4

3, 4

COMMONWEALTH'S
EXHIBIT
43

Morris K 1.2, 3

Mary K 1.1, 2

J. Cruse 1.1, 4

M. Williams 1.2, 4

Vagard/Gordon Smith 1.1, 4